NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS

Congressional Information Service
Washington, D.C

S. Hrg. 101-194, Pt. 1

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FOR HIGH CRIMES AND MISDEMEANORS

MARCH 17, 1989
ORGANIZATIONAL MEETING OF THE COMMITTEE

PRETRIAL FILINGS FROM MARCH 16, 1989, THROUGH JULY 7, 1989

PRETRIAL MEETINGS OF APRIL 4, 12, 13 AND 19; MAY 17 AND 18; JUNE 7 AND 22, 1989

DISPOSITIONS OF PRETRIAL ISSUES: ORDERS OF APRIL 14, APRIL 21, MAY 18, MAY 24, JUNE 8, AND JUNE 23, 1989

PRETRIAL EXAMINATIONS OF JUNE 15, 1989

Part 1 of 3 Parts

U.S. GOVERNMENT PRINTING OFFICE
98-109 WASHINGTON : 1989

5961-5

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

IMPEACHMENT TRIAL COMMITTEE

JEFF BINGAMAN, New Mexico, *Chairman*
ARLEN SPECTER, Pennsylvania, *Vice Chairman*

PATRICK J. LEAHY, Vermont
DAVID PRYOR, Arkansas
RICHARD H. BRYAN, Nevada
J. ROBERT KERREY, Nebraska
JOSEPH I. LIEBERMAN, Connecticut

DAVE DURENBERGER, Minnesota
WARREN B. RUDMAN, New Hampshire
CHRISTOPHER S. BOND, Missouri
SLADE GORTON, Washington
CONRAD BURNS, Montana

Michael Davidson, *Senate Legal Counsel*
Anthony L. Harvey, *Administrator*
Elaine W. Stone, *Counsel*
Mark A. Klugheit, *Counsel*
Bruce O. McBarnette, *Counsel*
P. Casey McGannon, *Staff Assistant* and *Exhibits Clerk*
Isabel T. McVeigh, *Staff Assistant* and *Journal Clerk*
Angela Muenzer, *Staff Assistant*
Marilyn Poku, *Staff Assistant*

Members' Staff Representatives

Senator BINGAMAN, *Chairman*, Patrick Von Bargen
Senator LEAHY, Cathy Russell and Mark Gerchick
Senator PRYOR, John Monahan
Senator BRYAN, John Forrest
Senator KERREY, William Hoppner
Senator LIEBERMAN, John Nakahata and Aaron Beyer
Senator SPECTER, *Vice Chairman*, Ron Weich
Senator DURENBERGER, Edward Garvey and Joshua Leby
Senator RUDMAN, Jim Ferrell and Jonathan Page
Senator BOND, Chris Leritz
Senator GORTON, Anthony Lowe
Senator BURNS, Lori Bass

Interns

Troy Oechsner
Jeffrey Rackow
Andrea Wintroub
Marc McCaskill

Pages

Michelle Jenner
Johnnie Kaberle

CONTENTS

PART 1 OF 3 PARTS

Page

I. Committee Established to Receive and Report Evidence with Respect to Articles of Impeachment Against Judge Alcee L. Hastings [S. Res. 38] (Congressional Record—Senate, March 16, 1989) 1
Appointment of Committee Members Under Impeachment Rule XI (Congressional Record—Senate, March 16, 1989) 7
Amendment to S. Res. 38 [S. Res. 123] (Congressional Record—Senate, May 10, 1989) 11
II. Statements Submitted and Filed by the Parties on Feb. 21, 1989, and Referred to the Committee on March 16. 1989:
Joint Statement Pursuant to S. Res. 480 (adopted Sept. 30, 1988) 15
Separate Statement of the House of Representatives Pursuant to S. Res. 480 (adopted Sept. 30, 1988) 15
III. Organizational Meeting of the Senate Impeachment Committee (March 17, 1989) 65
IV. Senate Legal Counsel's Letter to Counsel for Both Parties (March 24, 1989) 77

Pretrial Filings in Preparation for the April 12, 1989, Meeting to Hear Pretrial Arguments

V. Parties' Response to Senate Legal Counsel's Letter of March 24, 1989:
Report and Recommendations of the House Managers on Pending Pretrial Matters (March 31, 1989) 83
Exhibit A: Documents Made Available to the House of Representatives in this Impeachment Proceeding 95
Exhibit B: Revised Stipulation of Facts 97
Exhibit C [Order] On Application for Transfer of Sealed Wiretap Materials to United States House of Representatives (In Re: Judge Alcee L. Hastings USDC for Southern District of Florida) 133
Respondent's Reply to House Managers' Report and Recommendations on Pending Pretrial Matters (April 7, 1989) 135
Respondent's Further Memorandum on Pretrial and Trial Procedures Necessary for a Trial that is Fair to Respondent (April 2, 1989) 163
House Managers' Reply Re: Documents that the House has (or has not) Provided to Judge Hastings (April 4, 1989) 197
VI. Defense Funds:
Judge Alcee L. Hastings' Motion Requesting Funds for Respondent's Defense (March 30, 1989; printed in the Congressional Record—Senate, and referred to the Committee, April 4, 1989) 203
Memorandum of the House Managers Regarding the Application of the Compensation Clause of the U.S. Constitution to Respondent's Request for Defense Funds (April 7, 1989) 209

PART 1 OF 3 PARTS—Continued

Meetings of April 4, 12, and 13, 1989

Page

VII. Memorandum for the Record [Informal conference with parties, in closed session] (April 4, 1989) 219

VIII. Meeting to Hear Arguments on Pretrial Issues (April 12, 1989):
  Agenda 221
  Transcript 225

IX. Memorandum for the Record [Deliberation in closed sessions of April 13, 1989] 277

COMMITTEE ACTION: FIRST ORDER

X. Disposition of Certain Pretrial Issues (April 14, 1989) 281

Pretrial Filings on Witness Lists

XI. House Managers' Preliminary Witness List [Excerpt of Response to August 10, 1988, Letter from the Senate Committee on Rules and Administration] (Sept. 6, 1988) 295
  Supplement to House Managers' Preliminary Witness List (April 19, 1989) 299
  Letter from House Managers Re: Intent to Call Three Additional Witnesses (May 5, 1989) 303
  Letter from House Special Counsel to Senate Legal Counsel Re: Two Additional Witnesses for the House (June 9, 1989) 305

XII. Respondent's Preliminary Witness List (April 19, 1989) 307

Meeting of April 19, 1989

XIII. Memorandum for the Record [Committee meeting in closed session] 340

COMMITTEE ACTION: SECOND ORDER

XIV. Further Disposition of Pretrial Issues (April 21, 1989) 341

Pretrial Filings on Discovery

XV. Production of Documents:
  FBI Director Sessions' Response to the Chair's First Order of April 14, 1989 (April 21, 1989) 347
    Respondent's Request for Additional Documents from FBI Director Sessions (May 3, 1989) 351
  House Managers' Response to Respondent's Request for Certain Documents (April 21, 1989) 357
    Respondent's Counsel's Letter to House Manager Bryant Concerning Daily Exhibit Lists Compiled by the Judicial Council of the Eleventh Circuit (April 26, 1989) 359
      House Managers' Response to the April 26, 1989, Letter from Respondent's Counsel (May 3, 1989) 361
  House's Response to Respondent's Request for Certain Documents Authorized to be Released by the House Subcommittee on Criminal Justice (April 25, 1989) 363
    House Special Counsel's Letter to Counsel for Respondent Re: Documents Made Available on April 25, 1989 (April 27, 1989) 369
    Respondent's Counsel's Letter to House Manager Bryant Re: Use of Material from the Criminal Justice Subcommittee (April 26, 1989) 371

PART 1 OF 3 PARTS—Continued

Page
House Special Counsel's Letter to Respondent's Counsel Re: Agreement on Confidentiality of FBI Documents (May 1, 1989) 373
Respondent's Counsel's Letter to the Chair and the Vice Chair Requesting Adjustment in Dates Specified in the First Order (April 26, 1989) 375
Respondent's Specific Request for Documents from Chief Judge Roney of the Eleventh Circuit (April 26, 1989) 377
House Managers' Response to Respondent's Specific Request for Documents from Chief Judge Roney (May 3, 1989) 385
Letter from John Doar to Respondent's Counsel Re: Documents Requested of Chief Judge Roney (May 12, 1989) 389
Letter from John Doar to the Chair Re: Documents Requested by Respondent (June 26, 1989) 393
Respondent's Counsel's Letter to Atty. Gen. Thornburgh for Production of Dept. of Justice Documents (May 3, 1989) 395
House Managers' Response to Respondent's Requests for Production of Dept. of Justice and FBI Documents (May 5, 1989) 403

PRETRIAL FILINGS FROM MAY 10, 1989, THROUGH THE FOURTH ORDER OF MAY 24, 1989

XVI. Filings on Trial Procedures:

House Managers' Recommendations on Trial Procedures (May 10, 1989) 409
Respondent's Memorandum on Scheduling and Other Pending Issues as of May 10, 1989 419
House Managers' Response to Respondent's Memorandum on Scheduling (May 17, 1989) 437

XVII. Depositions:

Respondent's Request for Specific Depositions (May 10, 1989) 449
House Managers' Response to Respondent's Request for Specific Depositions (May 16, 1989) 469
Letter to Supplement House Managers' Response (May 17, 1989) 471
House Managers' Request for Deposition Subpoenas (May 16, 1989) 473

MEETING OF MAY 17, 1989

XVIII. Memorandum for the Record [Committee meeting in closed session] 479

COMMITTEE ACTION: THIRD ORDER

XIX. Disposition of Motion Requesting Funds for Respondent's Defense (May 18, 1989) 483

PRETRIAL FILINGS (Continued)

XX. Respondent's Response to Stipulations Proposed by the House (May 17, 1989) 485

MEETING OF MAY 18, 1989

XXI. Pretrial Conference with the Parties [held in closed session]:

Agenda 543
Transcript 545

PART 1 OF 3 PARTS—Continued

PRETRIAL FILINGS (Continued)

Page

XXII. Respondent's Statement Re: Need for Time and Funds [Appendix omitted] (May 19, 1989) 589

COMMITTEE ACTION: FOURTH ORDER

XXIII. Disposition of Pretrial Issues (May 24, 1989) 601

PRETRIAL FILINGS (Continued)

XXIV. Stipulations (continued):
Completed and Corrected Response to Stipulations Proposed by the House (June 1, 1989) 615
XXV. Witnesses and Depositions (continued):
House Special Counsel's Letter to the Chair and the Vice Chair Re: Materials on the Competency of Joseph Nesline as a Witness [Exhibits omitted] (May 25, 1989) 691
Respondent's Counsel's Letter to Chair and Vice Chair (June 1, 1989) 693
XXVI. Production of Documents (continued):
Letter from FBI to Respondent's Counsel Re: Request for Documents and Information (May 31, 1989) 699
Letter from Acting Associate Atty. Gen. Joe D. Whitley Re: Respondent's Request for Additional Documents (June 2, 1989) 707
Letter from Committee Counsel Elaine W. Stone to Department of Justice Attorney Jack C. Keeney re: in camera review of documents (June 8, 1989) 711
  Letters from Jack C. Keeney, of the Department of Justice, to Elaine W. Stone [enclosures omitted] (June 14, 1989) 713
  Letter from Committee Counsel Mark A. Klugheit to Respondent's Counsel, Terence J. Anderson, re: documents produced by the Department of Justice (June 14, 1989) 715
Letter from Respondent's Counsel to Chair and Vice Chair Re: Grand Jury Materials Sought by the Committee (June 7, 1989) 717
Letter from the Chair and Vice Chair Re: Request for Access to Grand Jury Materials, Electronic Surveillance Materials and Information (June 8, 1989) 719
  Order by Judge Butzner (11th Cir.) Authorizing Release of Grand Jury Materials (June 8, 1989) 723
Letter from the Chair and Vice Chair to Judge Butzner Re: Supplementary Request for Access by the Committee to Sealed Information Held by the FBI [Exhibits omitted] (June 27, 1989) 725

MEETING OF JUNE 7, 1989

XXVII. Memorandum for the Record [Committee meeting in closed session] 727
  Resolution to Immunize from Use in Prosecution the Testimony of, and Other Information Provided by, William A. Borders, Jr. (June 7, 1989) 729

COMMITTEE RULES OF PROCEDURE

XXVIII. Submission of Rules of Procedure for the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings... 733

PART 1 OF 3 PARTS—Continued

COMMITTEE ACTION: FIFTH ORDER

Page

XXIX. Order Designating Contents of Final Pretrial Statements and Other Matters (June 8, 1989) 737

Pretrial Filings (Continued)

XXX. Witnesses and Depositions (continued):
Letter from House Special Counsel to the Chair Re: Deposition of Joanne Tyson Colt (June 14, 1989) 743
House Managers' Position Regarding Testimony of William Borders (June 15, 1989) 745
Letter from Respondent's Counsel to the Chair and Vice Chair Re: Testimony of William Borders (June 16, 1989) 749
Statement of Respondent Concerning the Testimony of William Borders (June 20, 1989) 751
XXXI. Use of Prior Testimony:
House Managers' Proposed Use of Prior Testimony (June 14, 1989) 757
  Supplement to House Managers' Proposed Use of Prior Testimony [Exhibits omitted] (June 15, 1989) 767
  Second Supplement to House Managers' Proposed Use of Prior Testimony [Exhibits omitted] (June 19, 1989) 771
  Third Supplement to the House Managers' Proposed Use of Prior Testimony [Exhibits omitted] (June 23, 1989) 773
Statement on Behalf of Respondent Re: Use of Prior Testimony [Appendix omitted] (June 14, 1989) 777
XXXII. Respondent's Motion for Reconsideration and Rescheduling (June 19, 1989) 781
XXXIII. Final Pretrial Statements:
  House Managers' Final Pretrial Statement [Exhibits omitted] (June 21, 1989) 797
  Letter from House Manager Bryant to the Chair and Vice Chair Re: *In Camera* Review of the Pretrial Statement of the House Managers (June 21, 1989) 815
  Letter from House Manager Bryant to the Chair and Vice Chair Re: *In Camera* Review of the Exhibits of the House Managers [Exhibits omitted] (June 22, 1989) 817

Pretrial Examinations

XXXIV. Memorandum for the Record [deposition of Peter V. Marcoline, Jr.] (June 15, 1989) 821
XXXV. Memorandum for the Record [deposition of Gerald E. McDowell] (June 15, 1989) 822

Meetings of June 22, 1989

XXXVI. Final Pretrial Conference with the Parties 825
XXXVII. Memorandum for the Record [deliberation in closed session] 851

COMMITTEE ACTIONS: SIXTH AND SEVENTH ORDERS

XXXVIII. Disposition of Proposed Stipulations of Fact Submitted by the House Managers, Sixth Order (June 23, 1989) 855
XXXIX. Disposition of Pretrial Issues, Seventh Order (June 23, 1989) 875

Pretrial Filings Following the Final Pretrial Conference with the Parties

XL. House Managers' Amended Final Pretrial Statement (June 23, 1989) 881

PART 1 OF 3 PARTS—Continued

Page

XLI. Comment on Behalf of Respondent Submitted Pursuant to the Sixth Pretrial Order (June 27, 1989) 899
XLII. Letter from House Manager Bryant to the Chair Re: Respondent's Failure to File a Final Pretrial Statement (June 28, 1989) 901
XLIII. Letter from House Manager Bryant Re: Changes in the House Witness List and Additional Exhibits [Exhibits omitted] (July 3, 1989) 903
XLIV. Respondent's Statement Concerning Authenticity and Genuineness and, Where Appropriate, Status of Exhibits Listed by the House (July 3, 1989) 907
House Managers' Response to Respondent's Statement Concerning Authenticity and Genuineness of House Exhibit 120 [Exhibits omitted] (July 5, 1989) 919
XLV. Letter from House Special Counsel to the Chair Re: Error in Stipulation No. 64 (July 3, 1989) 921

MATTERS WHICH MAY BE TREATED AS EVIDENCE OF FACT (JULY 6, 1989) **923**

XLVI. House Managers' Revised Pretrial Statement (July 7, 1989) 941
XLVII. Respondent's Pretrial Statement (July 7, 1989) 959
XLVIII. Letter from Respondent's Counsel Re: Status of Respondent's Discovery (July 7, 1989) 1013

IN RE: TESTIMONY OF WILLIAM A. BORDERS, JR.

XLVIX. Application for Order Immunizing Testimony and Other Information Provided by William Borders and Memorandum in support thereof [Exhibits omitted] (June 14, 1989) 1017
Order (June 19, 1989) 1025
L. Opposition of William Borders to Application for Order Immunizing Testimony (June 26, 1989) 1027
Transcript of hearing before Judge Louis F. Oberdorfer (U.S. District Court for the District of Columbia, June 26, 1989) 1037
Notice of Filing (June 27, 1989) 1051
Order (June 27, 1989) 1057
LI. Notice of Appeal (July 6, 1989) 1059

COMMITTEE ESTABLISHED TO RECEIVE AND REPORT EVIDENCE WITH RESPECT TO ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS

The **PRESIDENT** pro tempore. Under the previous order, the Senate will now turn to the consideration of Senate Resolution 38 which the clerk will report.

The legislative clerk read as follows:

> A resolution (S. Res. 38) to provide for the appointment of a committee to receive and report evidence with respect to articles of impeachment against Judge Alcee L. Hastings.

The Senate proceeded to consider the resolution.

The **PRESIDENT** pro tempore. The majority leader.

Mr. **MITCHELL**. Mr. President, last September the Committee on Rules and Administration reported its advice that the Senate has constitutional authority to appoint a committee pursuant to impeachment rule XI to receive and report to the Senate evidence in an impeachment trial. The Senate then, in Senate Resolution 480 of the 100th Congress, directed the Committee on Rules and Administration to hold a hearing early in the 101st Congress on the appropriate use of an evidentiary commitee under rule XI in this particular impeachment. Pursuant to that directive, the Committee on Rules and Administration received and considered the views of Judge Hastings' counsel, who opposed the appointment of an evidentiary committee, and also received and considered the views of the managers.

In making its recommendation to the Senate that a committee be appointed for this impeachment, the Rules Committee concluded that fairness to the parties could be achieved in a manner that is consistent with the Senate's ability to continue to conduct other business of public importance. The Rules Committee made several recommendations to help attain that objective.

Of particular importance, the Rules Committee recommended that the impeachment committee's public proceedings be videotaped so that Members who are not on the committee will have an opportunity to see the testimony of witnesses whom they would like to observe. The Rules Committee further recommended that ample time be provided between the conclusion of the impeachment committee's proceedings and the Senate's deliberations on the articles so that Members will have sufficient time to study the printed record and review any significant portions of the videotaped record.

Committees appointed under impeachment rule XI do not make recommendations to the Senate on the conviction or acquittal of an impeached officer. Senate Resolution 38 adheres to that basic concept, but, to assist the Senate in analyzing the evidentiary record, the resolution authorizes the impeachment committee to include in its report, in addition to the full record of evidence, a statement of uncontested facts and a summary of evidence on contested facts.

It is important to note also that impeachment rule XI preserves the Senate's power to determine the competency, relevancy, and materiality of evidence reported by the committee, and also preserves the Senate's right to send for any witnesses and to hear the testimony of those witnesses before the full Senate.

The provisions of impeachment rule XI, together with the recommendations of the Rules Committee, will help to assure a fair Senate trial of this impeachment. I urge the adoption of Senate Resolution 38.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

Mr. LEVIN. Mr. President, a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state his parliamentary inquiry.

Mr. LEVIN. Mr. President, does this resolution determine whether or not Judge Hastings will have an opportunity to testify or be cross-examined before the full Senate if he requests to do so following a report of the impeachment committee to the Senate?

The PRESIDENT pro tempore. The Senator will please refer to rule XI of the Rules of Impeachment which clearly sets forth the powers and responsibilites of the committee. The resolution does not address that question.

Mr. LEVIN. I thank the Chair.

The PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

Resolved, That pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The Majority and Minority Leader shall each recommend six members to the Presiding Officer for apppointment to the committee. The committee shall designate one of its members to be chairman and one of its members to be vice chairman.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under Rule XI.

SEC. 4. During proceedings conducted under Rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the presiding officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6. Necessary expenses of the committee shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee.

SEC. 7. The Secretary shall notify the House of Representatives and counsel for Judge Alcee L. Hastings of this resolution.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

The **President** pro tempore. The question is on the motion to reconsider.

Mr. **Hatch**. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

III

101st CONGRESS
1st Session

S. RES. 38

[Report No. 101–1]

To provide for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Judge Alcee L. Hastings.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 3), 1989

Mr. FORD, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar

MARCH 16 (legislative day, JANUARY 3), 1989

Considered and agreed to

RESOLUTION

To provide for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Judge Alcee L. Hastings.

Resolved, That pursuant to Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Presiding Officer shall appoint a committee of twelve senators to perform the duties and to exercise the powers provided for in the rule.

SEC. 2. The Majority and Minority Leader shall each recommend six members to the Presiding Officer for appointment to the committee. The committee shall designate one of its members to be chairman and one of its members to be vice chairman.

SEC. 3. The committee shall be deemed to be a standing committee of the Senate for the purpose of reporting to the Senate resolutions for the criminal or civil enforcement of the committee's subpoenas or orders, and for the purpose of printing reports, hearings, and other documents for submission to the Senate under Rule XI.

SEC. 4. During proceedings conducted under Rule XI the chairman of the committee is authorized to waive the requirement under the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials that questions by a Senator to a witness, a manager, or counsel shall be reduced to writing and put by the presiding officer.

SEC. 5. In addition to a certified copy of the transcript of the proceedings and testimony had and given before it, the committee is authorized to report to the Senate a statement of facts that are uncontested and a summary, with appropriate references to the record, of evidence that the parties have introduced on contested issues of fact.

SEC. 6. Necessary expenses of the committee shall be paid from the contingent fund of the Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee.

SEC. 7. The Secretary shall notify the House of Representatives and counsel for Judge Alcee L. Hastings of this resolution.

○

APPOINTMENT OF COMMITTEE MEMBERS UNDER IMPEACHMENT RULE XI

The PRESIDENT pro tempore. The majority leader.

Mr. MITCHELL. Mr. President, in accordance with Senate Resolution 38 I recommend to the Chair the appointment of Senators Bingaman, Leahy, Pryor, Bryan, Kerrey, and Lieberman to be members of the committee under impeachment rule XI.

Mr. President, at the request of the distinguished Republican leader, I hereby recommend to the Chair the appointment of Senators Specter, Rudman, Gorton, Durenberger, Bond, and Burns to be members of the committee under impeachment rule XI.

The PRESIDENT pro tempore. Pursuant to Senate Resolution 38, and impeachment rule XI, the Chair appoints upon the recommendations of the two leaders, the following Senators: Messrs. Bingaman, Leahy, Pryor, Bryan, Kerrey, Lieberman, Specter, Durenberger, Rudman, Bond, Gorton, and Burns to be members of the committee to receive and report evidence in the impeachment of Judge Alcee L. Hastings.

The majority leader is recognized.

STATEMENTS SUBMITTED

Mr. MITCHELL. Mr. President, Senate Resolution 38 provides that the committee shall designate one of its members to be chairman and one of its members to be vice chairman. The Committee on Rules and Administration will be providing its hearing room, Russell SR–301, to the impeachment committee for an organizational meeting tomorrow, March 17, at 8:30 a.m., so that the members of the committee may designate their chairman and vice chairman and take any other initial organizational measures which they deem appropriate.

Pursuant to Senate Resolution 480 of the 100th Congress, the parties submitted to the Senate on February 21, 1989, a joint statement, and the managers submitted a separate statement, on stipulations and other evidentiary matters. I ask unanimous consent that those statements now be referred to the committee appointed under impeachment rule XI.

FILING OF STATEMENTS

The PRESIDENT pro tempore. Without objection, it is so ordered. The majority leader is recognized.

Mr. MITCHELL. Mr. President, while debate among Senators during an impeachment trial is not permitted in open session, the Senate after a vote on the issue has permitted Senators to file statements explaining their votes.

I ask unanimous consent that Senators now may, if they so wish, file statements with respect to the votes which have just occurred on Judge Hastings' motions to dismiss.

The PRESIDENT pro tempore. Without objection, that will be the order of the Senate.

EXPLANATORY STATEMENT PERTAINING TO SENATOR SPECTER'S VOTE TO DENY THE MOTIONS TO DISMISS

Mr. SPECTER. Mr. President, I have voted to deny the motions to dismiss, because of my view that a motion to dismiss ought to be granted at the outset of the proceeding only if there is a conclusive legal bar to going forward, and there is not in this case.

There appears to be a conflict between fairness and what may be a technical, legal provision, but I submit that the Senate can guarantee fairness through the conclusion of our proceeding, after we hear all of the evidence and consider the matter in full.

The concept of double jeopardy has evolved in a more liberal way with courts now holding double jeopardy applicable, where in the past they had denied such claims. For example, in Pennsylvania it used to be the law that if a defendant was acquitted in the Federal court, he could be tried in the State court; and the Pennsylvania Supreme Court has changed that rule.

Just last week there was a unique decision in the Federal courts on the issue of punitive damages, where in a civil context the Court held that only one plaintiff can collect punitive damages.

That was articulated on the grounds of fairness, but there was a very substantial double jeopardy concept behind it.

So it may be that ultimately this body would conclude that double jeopardy does attach, and while we do articulate the concept that legal principles do not turn on the facts and bad cases make bad law, the reality is that cases are decided in a factual context.

After we hear the details of Judge Hastings' perhaps it will set a stage which is sufficiently egregious that we would want to establish a legal principle that after an acquittal by a jury someone should not be called upon to stand in an impeachment proceeding.

The problem that this Senator has is that if we were to dismiss at this time Judge Hastings would stay in office to be a Federal judge. One might say, well, if the principle is established that double jeopardy attaches, as a matter of law, we ought not to be concerned about his staying in office.

But, Mr. President, it is precisely that situation that impeachment addresses, that is, whether someone should stay in office as distinguished from whether someone ought to sustain a criminal penalty.

Mr. President, with all due respect to the arguments which we heard yesterday and the time which each of us may have had to consider this matter, I do not believe that we have had an adequate opportunity to examine this very complicated legal issue. I know that speaking for myself I have not.

I noted that the litigation preceding this impeachment has resulted in seven reported opinions from the lower Federal courts in the 11th Circuit and in the Court of Appeals for the District of Columbia, and I have started to scan some of the opinions, and they are very, very complicated. To the extent that I have been able to study them so far they do tend to establish the principle that the jurisdiction of the courts under article III is very different from the jurisdiction of the Senate and the House under the impeachment provisions, so that when Judge Hastings had argued that he should not be first tried before being impeached the courts said, no, the article III powers are separate jurisdiction. This raises an inference that the impeachment powers of the House and now the Senate are really separate and distinct.

If we had granted the motions we would have established a binding precedent which I think would be very unwise. In the course of our later deliberations I think we can guarantee that fairness will be done. I believe that due process and an orderly deliberation calls upon this body to proceed beyond this point. For these reasons, I voted against the motions to dismiss.

Mr. Mitchell. Mr. President, I suggest the absence of a quorum.

The **President** pro tempore. The absence of a quorum has been suggested. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. Mitchell. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **President** pro tempore. Without objection, it is so ordered. The Senate will please be in order.

The majority leader.

AMENDMENT TO S. RES. 38 PROVIDING FOR THE APPOINTMENT OF A COMMITTEE TO RECEIVE AND TO REPORT EVIDENCE WITH RESPECT TO THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS

Mr. **MITCHELL**. Mr. President, for myself and the distinguished Republican leader, I send a resolution to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER**. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 123) to amend Senate Resolution 38, 101st Congress, providing for the appointment of a committee to receive and report evidence with respect to the articles of impeachment against Judge Alcee L. Hastings.

The **PRESIDING OFFICER**. Is there objection to the request of the Senator from Maine?

There being no objection, the Senate proceeded to consider the resolution.

The **PRESIDING OFFICER**. The question is on agreeing to the resolution.

The resolution (S. Res. 123) was agreed to, as follows:

III

101st CONGRESS
1st Session

S. RES. 123

To amend Senate Resolution 38, One Hundred First Congress, providing for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Judge Alcee L. Hastings.

IN THE SENATE OF THE UNITED STATES

May 10 (legislative day, January 3), 1989

Mr. Mitchell (for himself and Mr. Dole) submitted the following resolution; which was considered and agreed to

---

RESOLUTION

To amend Senate Resolution 38, One Hundred First Congress, providing for the appointment of a committee to receive and to report evidence with respect to articles of impeachment against Judge Alcee L. Hastings.

Resolved, That section 6 of Senate Resolution 38, One Hundred First Congress, is amended to read as follows:

"Sec. 6. The actual and necessary expenses of the committee, including the employment of staff at an annual rate of pay, and the employment of consultants with prior approval of the Committee on Rules and Administration at a rate not to exceed the maximum daily rate for a standing committee of the Senate, shall be paid from the contingent fund of the

Senate from the appropriation account "Miscellaneous Items" upon vouchers approved by the chairman of the committee, except that no voucher shall be required to pay the salary of any employee who is compensated at an annual rate of pay.".

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STATEMENTS SUBMITTED BY THE PARTIES TO THE SENATE ON FEBRUARY 23, 1989, AND REFERRED TO THE COMMITTEE ON MARCH 16, 1989

[In the Senate of the United States Sitting as a Court of Impeachment]

JOINT STATEMENT PURSUANT TO SENATE RESOLUTION 480

Pursuant to Senate Resolution 480, counsel for United States District Judge Alcee L. Hastings and the Managers of the House of Representatives do hereby report to the Senate as follows:

(1) There have been no stipulations agreed to by counsel for the parties.

(2) There has been no other agreement by counsel for the parties on matters which may facilitate the resolution of this impeachment.

On this day, the Managers for the House of Representatives have also submitted to the Senate a Separate Statement of the House of Representatives Submitted Pursuant to S. Res. 480. Counsel for Judge Hastings reserves the right to respond to that Separate Statement.

Respectfully submitted,

TERENCE J. ANDERSON,
Counsel for U.S. District Judge Alcee L. Hastings.
ALAN I. BARON,
Special Counsel for the Managers of the House of Representatives.

February 20, 1989.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of Judge Alcee L. Hastings.

SEPARATE STATEMENT OF THE HOUSE OF REPRESENTATIVES SUBMITTED PURSUANT TO SENATE RESOLUTION 480

Senate Resolution 480 directs counsel to the parties to the impeachment:

> to work together to stipulate to evidentiary matters that are not in dispute, including stipulations as to documents, and [to] jointly report, by February 20, 1989, on the stipulations to which such counsel have agreed, and on any other matter which such counsel agree may facilitate the resolution of this impeachment.

The Joint Statement of counsel for the parties, filed this day, sets forth the absence of agreement on any such matter. However, in order to apprise the Senate of the exchange of proposals between the parties pertaining to matters that may facilitate the resolution of this impeachment, and the responses thereto, the House Managers respectfully submit the following:

(1) Proposed Stipulation of Documents, submitted by the House Managers on December 15, 1988.

(2) Proposed Stipulation of Facts, submitted by the House Managers on December 15, 1988.

(3) Statement of Respondent concerning stipulations, contained in Statement on Behalf of United States District Judge Alcee L. Hastings Concerning Procedures Necessary for a Fair Trial in the Senate in the Present Case of Impeachment at 8–9, dated January 17, 1989. (This memorandum was submitted to the Senate Committee on Rules and Administration.)

(4) First Request for Production of Documents and Other Tangible Materials, submitted by Respondent on December 28, 1989.

(5) Response of the House of Representatives to Respondent's First Request for Production of Documents and Other Tangible Materials, submitted on January 26, 1989.

(6) Proposal by the House of Representatives concerning Admissions, contained in Response of the House of Representatives to the December 12, 1988 Letter from the Senate Committee on Rules and Administration, at 2-3.

(7) Statement of Respondent concerning admissions, contained in Testimony of Terence J. Anderson on Behalf of United States District Judge Alcee L. Hastings Before the Senate Committee on Rules and Administration, at 10-11.

With respect to the House proposals on stipulations and admissions, the responses of Respondent listed above constitute the only written statements thus far submitted which relate to these matters.

Finally, the House Managers state that the original documents described in their proposed Stipulation as to Documents have been made available for inspection by the counsel for Judge Hastings, but that thus far, counsel has declined to begin that inspection.

Respectfully submitted,

THE U.S. HOUSE OF REPRESENTATIVES,
ALAN I. BARON,
Special Counsel.

Managers of the House of Representatives:

Jack Brooks; John Conyers, Jr., Mike Synar; John Bryant; Hamilton Fish, Jr.; and George W. Gekas.

Impeachment Trial Staff:

Alan I. Baron, Special Counsel; Janice E. Cooper, Assistant Special Counsel; Patricia Wynn, Assistant Special Counsel; and Lori E. Fields, Assistant Special Counsel.

House Judiciary Committee Staff Participating in Impeachment Trial Preparation:

William M. Jones, General Counsel; Alan F. Coffey, Jr., Chief Associate Counsel; Daniel M. Freeman, Counsel; Peter Levinson, Associate Counsel; and Raymond V. Smietanka, Associate Counsel.

February 20, 1989.

EXHIBIT 1

[In the Senate of the United States Sitting As a Court of Impeachment]

In re Impeachment of Judge Alcee L. Hastings.

PROPOSED STIPULATION OF DOCUMENTS

The House of Representatives, through its Managers, proposes that the parties stipulate to the following for purposes of this action only:

(1) That each of the documents listed in the attached schedule is genuine.

(2) That the documents listed in the attached schedule in categories A1-13a; A14-15; B; C; I3-7; J5 and J13 and the transcriptions of tape recordings listed in the attached schedule in categories D3-8; D10; D12, D14; D16-19; D21-22 and D24 are all records made at or near the time of the event reported, by a person with knowledge of the event or from information received from a person with knowledge of the event as part of a regularly conducted business activity.[1]

(3) That the documents listed in the attached schedule in categories F1b; F1g; F3a; F3c-d; F4-5; F6a-b; F7-10; F12-14; G1b-d,f,g; J1-4; and J10-11 and the transcriptions of tape recordings listed in the attached schedule in categories F1c-d; F2a; F3b; F6c; G1e and G2 are all records setting forth the activities of a public office or agency or matters observed and reported pursuant to an official duty to observe and report.[2]

These stipulations do not preclude pertinent objections to the admissibility of the documents listed in the attached schedule based on matters not addressed in these stipulations.

Respectfully submitted,

THE U.S. HOUSE OF REPRESENTATIVES,
ALAN I. BARON,
Special Counsel.

Managers of the House of Representatives:

---

[1] With regard to the transcriptions of tape recordings in this stipulation and in stipulation 3, below, these stipulations are intended to include the transcriptions only, and not the content of the recorded conversations.

[2] With respect to G2, the stipulations goes only to the transcript of the Investigating Committee proceedings.

Peter W. Rodino, Jr.; John Conyers, Jr.; Don Edwards; John Bryant; Hamilton Fish, Jr.; and George W. Gekas.

Impeachment Trial Staff:

Alan I. Baron, Special Counsel; Janice E. Cooper, Assistant Special Counsel; Patricia Wynn, Assistant Special Counsel; and Lori E. Fields, Assistant Special Counsel.

House Judiciary Committee Staff Participating in Impeachment Trial Preparation:

M. Elaine Mielke, General Counsel; Alan F. Coffey, Jr., Associate Counsel; and Peter Levinson, Counsel.

SCHEDULE OF DOCUMENTS

A. TELEPHONE RECORDS

1. Telephone bills for (305) 731-8176, residence telephone of Judge Alcee L. Hastings, January 1, 1981 through November 30, 1981. *See* Appendix II, Part 1, at 500-01, 503-04, 838, 936; Part 2 at 977, 996, 1056, 1063, 1070, 1076, 1198-99, 1434-35; Part 3 at 2099, 2154, 2301-03, 2312-13, 2317, 2321 and 2331.[1]

2. Telephone bills for (305) 731-8176, residence telephone of Judge Alcee L. Hastings, December 26, 1979 through January 5, 1981. *See* Appendix II, Part 3 at 2431-67.

3. Telephone bills for (305) 350-4201, 305-4330, 350-4228, 350-4278, 350-4279, 350-4289 and 350-5011, telephones in the chambers of Judge Alcee L. Hastings. February 24, 1981 through October 20, 1981. *See* Appendix II, Part 3 at 2402-13, 2429 and 2666-68.

4. Telephone bills for (305) 945-9939, residence telephone of William Dredge (under the name of Howard Schlosser), January 1, 1981 through December 15, 1981. *See* Appendix II, Part 1 at 784-85; Part 2 at 1051-52.

5. Telephone bills for (305) 841-0737, business telephone of William Dredge, March 14, 1981 through November 30, 1981, *See* Appendix II, Part 2 at 944, 1073, 1411 and 1418.

6. Telephone bills for (202) 398-6321, residence telephone of William Borders, May 1, 1981 through November 1, 1981. *See* Appendix II, Part 1 at 843, 904, 906; Part 2, at 1061, 1072, 1405; Part 3 at 2343-48 and 2355.

7. Telephone bills for (202) 387-1100, 387-1101, 387-1102, 387-1103, 387-1104, 387-1105, 387-2229 and 387-2255, business telephones of William Borders (under the name of James W. Cobb), July 16, 1981 to August 14, 1981; and September, 1981. *See* Appendix II, Part 2 at 1384, 1420-21; Part 3 at 2326-28, 2350-52, 2354-2400 and 2663.

8. Office telephone logs of William Borders, April 7, 1981 through April 17, 1981; April 22, 1981 through May 7, 1981; May 26, 1981 through June 23, 1981; and July 3, 1981; through October 10, 1981, *See* Appendix II, Part 1 696, 705, 707, 717, 719, 730, 749, 787, 902, 919, 921, 923, 927; Part 2 at 985, 989, 999, 1001, 1005, 1007, 1013, 1177-79, 1188, 1190, 1246, 1407, 1409, 1423, 1445, 1503, 1839; Part 3 at 2305-10, 2315, 2319, 2323-24 and 2340-41.

9. Telephone bills for (305) 757-6530, residence telephone of H. Paul Rico, September 23, 1981 through October 30, 1981. *See* Appendix II, Part 2 at 1662.

10. Telephone bills for (305) 733-1697, residence telephone of Patricia Williams, January 1, 1981 through October 31, 1981. *See* Appendix II, Part 3 at 2096-97, 2680 and 2689.

11. Telephone billing records of Patricia Williams, January 1, 1979 through December 31, 1980. *See* Appendix II, Part 3 at 2690-91.

12. Telephone bills for (305) 486-0733, residence telephone of Mildred Hastings, January 1, 1981 through October 31, 1981. *See* Appendix II, Part 3 at 2051 and 2469-86.

13a. Subscriber information for (202) 789-9108, United States Courthouse, Washington, D.C. 1st Floor Section B, August 7, 1981. *See* Appendix II, Part 3 at 2488.

b. Floor plan for United States Courthouse, Washington, D.C., 1st Floor. *See* Appendix II, Part 3 at 2490.

14. L'Enfant Plaza Hotel Hobic printout, October 9, 1981. *See* Appendix II, Part 3 at 1965-2003.

---

[1] The citations are to the appendices published in the Matter of the Impeachment Inquiry Concerning U.S. District Judge Alcee L. Hastings Before the Subcommittee on Criminal Justice of the House Committee on the Judiciary, 100th Cong., 2nd Sess. (1988).

15. Chesapeake & Potomac Telephone Company computer records, L'Enfant Plaza Hotel, October 9, 1981, *See* Appendix II, Part 3 at 2024–26.

16. List of Identified Telephone Numbers. *See* Appendix II, Part 1 at 505–48.

17. Quick Reference to Identified Telephone Numbers. *See* Appendix II, Part 1 at 550–53.

B. AIRLINE RECORDS

1. Eastern Airlines Reservation Record for William Borders, May 5, 1981. *See* Appendix II, Part 1 at 751; Part 2 at 1021.

2. Eastern Airlines Reservation Record for William Borders, May 5, 1981. *See* Appendix II, Part 1 at 755; Part 2 at 1025.

3. Eastern Airlines Ticket No. 4447:524:604, coupon 2, issued to William Borders for May 5, 1981. *See* Appendix II, Part 1 at 753; Part 2 at 1019.

4. Eastern Airlines Reservation Record for Judge Alcee L. Hastings, May 5, 1981. *See* Appendix II, Part 1 at 765.

5. Eastern Airlines Reservation Record for William Dredge, July 7, 1981. *See* Appendix II, Part 2 at 941.

6. Eastern Airlines Reservation Record for William Dredge, July 9, 1981. *See* Appendix II, Part 2 at 943.

7. Eastern Airlines Ticket No. 8352:834:885, coupon 1, issued to William Borders for July 7, 1981. *See* Appendix II, Part 2 at 939; and 1074.

8. Eastern Airlines Reservation Record for William and Lorraine Dredge, July 16–19, 1981. *See* Appendix II, Part 2 at 1196.

9. Eastern Airlines Ticket No. 1225:325:511, coupon 1, issued to Lorraine Dredge for July 16, 1981. *See* Appendix II, Part 2 at 1192.

10. Eastern Airlines Ticket No. 1225:325:512, coupon 1, issued to Lorraine Dredge for July 16, 1981. *See* Appendix II, Part 2 at 1194.

11. Eastern Airlines Ticket No. 007:4476:621:095, coupon 1, issued to Judge Alcee L. Hastings for July 17, 1981. *See* Appendix II, Part 2 at 1201.

12. Eastern Airlines Ticket No. 007:4476:621:095, coupon 2, issued to Judge Alcee L. Hastings for July 20, 1981. *See* Appendix II, Part 2 at 1262.

13. Eastern Airlines Ticket No. 007:4479:834:615, coupon 2, issued to William Borders for August 21, 1981. *See* Appendix II, Part 2 at 1315.

14. Eastern Airlines Timetable, effective September 9, 1981. *See* Appendix II, Part 2 at 1431–32, 1464, 1629–30 and 1658–59.

15. Eastern Airlines Information Record for Flight No. 176, September 11, 1981. *See* Appendix II, Part 2 at 1437.

16. Eastern Airlines Boarding Pass for William Borders, September 11, 1981. *See* Appendix II, Part 2 at 1449 and 1458.

17. Eastern Airlines Information Record for Flight No. 664, September 12, 1981. *See* Appendix II, Part 2 at 1518.

18. Eastern Airlines Reservation Record for William Borders, September 12, 1981. *See* Appendix II, Part 2 at 1516.

19. Eastern Airlines Ticket No. 007:4476:120:986, coupon 1, issued to William Borders for September 12, 1981. *See* Appendix II, Part 2 at 1514.

20. Eastern Airlines Ticket No. 007:4455:548:497, coupon 1, issued to Judge Alcee L. Hastings for September 13, 1981. *See* Appendix II, Part 2 at 1562.

21. Eastern Airlines Reservation Record for Flight No. 177, September 14, 1981. *See* Appendix II, Part 3 at 2537.

22. Eastern Airlines Ticket No. 007:4448:664:000, coupon 1, issued to William Borders for September 18, 1981. *See* Appendix II, Part 2 at 1623.

23. Eastern Airlines Ticket No. 007:4448:664:000, coupon 2, issued to William Borders for September 18, 1981. *See* Appendix II, Part 2 at 1625 and 1649.

24. Eastern Airlines Ticket No. 007:4448:664:000, coupon 3, issued to William Borders for September 19, 1981. *See* Appendix II, Part 2 at 1651.

25. Eastern Airlines Request for Information Re: Ticket No. 007:4448:664:000, October 28, 1981. *See* Appendix II, Part 2 at 1633.

26. Eastern Airlines Timetable, effective October 1, 1981. *See* Appendix II, Part 2 at 2086–87.

27. Eastern Airlines Passenger Flight Information Report, October 9, 1981. *See* Appendix II, Part 3 at 2075.

28. Eastern Airlines Ticket No. 007:4476:621:095, coupon 2, issued to Judge Hastings for October 9, 1981. *See* Appendix II, Part 3 at 2073.

29. Delta Airlines Passenger History Record for Judge Alcee L. Hastings, October 9, 1981. *See* Appendix II, Part 1 at 379; Part 3 at 2092.

30. Delta Airlines Ticket No. 006:4813:146:683, coupon 4, issued to Judge Alcee L. Hastings for October 9, 1981. *See* Appendix II, Part 1 at 377; Part 3 at 2094.

31. Air Florida Ticket No. 8401:332:606, coupon 1, issued to William Borders for September 11, 1981. *See* Appendix II, Part 2 at 1447.

32. Air Florida Ticket No. 8401:332:606, coupon 2, issued to William Borders for September 11, 1981. *See* Appendix II, Part 2 at 1505.

33. American Airlines Ticket No. 001:4446:572:005, coupon 1, issued to William Borders for September 15, 1981. *See* Appendix II, Part 2 at 1390, 1564 and 1609.

34. American Airlines Ticket No. 001:4446:572:005, coupon 2, issued to William Borders for September 15, 1981. *See* Appendix II, Part 2 at 1392, 1566 and 1610.

35. American Airlines Ticket No. 001:4446:572:005, coupon 3, issued to William Borders for September 18, 1981. *See* Appendix II, Part 2 at 1394 and 1611.

36. American Airlines Ticket No. 001:4446:572:005, coupon 4, issued to William Borders for September 18, 1981. *See* Appendix II, Part 2 at 1396 and 1612.

C. HOTEL RECORDS

1. Beverly Hills Hotel, bill of Thomas and Frank Romano, April 7-11, 1981. *See* Appendix II, Part 1 at 657-59.

2. Sheraton Washington Hotel, reservation card of Judge Alcee L. Hastings, September 11, 1981. *See* Appendix II, Part 2 at 1454.

3. Sheraton Washington Hotel, bill of Judge Alcee L. Hastings, September 11-13, 1981. *See* Appendix II, Part 2 at 1456 and 1524.

4. Sheraton Washington Hotel, bill of Jesse McCrary, September 12-13, 1981. *See* Appendix II, Part 2 at 1529.

5. Riviera Hotel (Las Vegas, Nevada), registration card of William Borders, September 15, 1981. *See* Appendix II, Part 2 at 1572.

6. Miami International Airport Hotel, bill of William Borders, September 19, 1981. Appendix II, Part 2 at 1631.

7. L'Enfant Plaza Hotel, bill no. 16182 of Judge Alcee L. Hastings, October 9, 1981. *See* Appendix II, Part 2 at 1953; Part 3 at 2041.

8. L'Enfant Plaza Hotel, room service bill of Judge Alcee L. Hastings, October 9, 1981. *See* Appendix II, Part 2 at 1889.

9. L'Enfant Plaza Hotel, bill no. 15750 of Frank Mitchell, October 10, 1981. *See* Appendix II, Part 3 at 2034.

10. L'Enfant Plaza Hotel, bill no. 16183 of William Borders, October 10, 1981. *See* Appendix II, Part 3 at 2036.

D. TAPE RECORDINGS AND TRANSCRIPTS

1. Tape recording and transcript of conversation by Roger Shuy, September 12, 1981, 8:05 a.m. (Rico and Borders). *See Impeachment Inquiry, Hearings Before the Subcommittee on Criminal Justice*, 100th Cong., 2d Sess. 1988 ["Impeachment Inquiry"] at 26-37.

2. Tape recording and transcript of conversation by Roger Shuy, September 19, 1981, 9:47 a.m. (Rico and Borders). *See* Impeachment Inquiry at 46-53.

3. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 10:20 a.m. (Rico and unidentified receptionist at Borders' office). *See* Appendix II, Part 2 at 1664-65.

4. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 12:29 p.m. (Rico and unidentified receptionist at Borders' office). *See* Appendix II, Part 2 at 1667-68.

5. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 2:20 p.m. (Borders and Bob (last name unknown)). *See* Appendix II, Part 2 at 1670-71.

6. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 2:49 p.m. (Borders and unidentified receptionist at Borders' office). *See* Appendix II, Part 2 at 1673.

7. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 3:01 p.m. (Rico and unidentified receptionist at Borders' office). *See* Appendix II, Part 2 at 1675-76.

8. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 3:02 p.m. (unidentified receptionist at Borders' office and Borders). *See* Appendix II, Part 2 at 1678-79.

9. Tape recording and transcript of telephone conversation by Roger Shuy, October 2, 1981, 3:10 p.m. (Rico and Borders). *See* Impeachment Inquiry at 55-58.

10. Tape recording and FBI transcript of telephone conversation, October 2, 1981, 4:50 p.m. (unidentified secretary at Borders' office and unidentified receptionist in Judge Hastings' chambers). *See* Appendix II, Part 2 at 1686.

11. Tape recording and transcript of telephone conversation by Roger Shuy, October 4, 1981, 9:38 a.m. (Rico and Borders). *See* Impeachment Inquiry at 62.

12. Tape recording and FBI transcript of telephone conversation, October 5, 1981, 4:22 p.m. (Rico and Borders). *See* Appendix II, Part 2 at 1704–06.

13. Tape recording and transcript of telephone conversation by Roger Shuy, October 5, 1981, 5:12 p.m. (Judge Hastings and Borders). *See* Impeachment Inquiry at 67–68.

14. Tape recording and FBI transcript of telephone conversation, October 7, 1981, 10:01 a.m. (Rico and unidentified receptionist at Borders' office). (*See* Day 6.)

15. Tape recording and transcript of telephone conversation by Roger Shuy, October 7, 1981, 12:19 p.m. (Rico and Borders). *See* Impeachment Inquiry at 70–72.

16. Tape recording and FBI transcript of telephone conversation, October 7, 1981, 12:22 p.m. (Borders and unidentified female).

17. Tape recording and FBI transcript of telephone conversation, October 7, 1981, 3:14 p.m. (Dredge and Borders). *See* Appendix II, Part 2 at 1799–1800.

18. Tape recording and FBI transcript of telephone conversation, October 7, 1981, 3:32 p.m. (Dredge and Borders). *See* Appendix II, Part 2 at 1802.

19. Tape recording and FBI transcript of telephone conversation, October 7, 1981, 7:39 p.m. (Rico and Borders). *See* Appendix II, Part 2 at 1762–64.

20. Tape recording and transcript of telephone conversation by Roger Shuy, October 8, 1981, 9:37 a.m. (Borders and Judge Hastings). *See* Impeachment Inquiry at 77–78.

21. Tape recording and FBI transcript of telephone conversation, October 9, 1981, 10:20 a.m. (Rico and unidentified receptionist at Borders' office).

22. Tape recording and FBI transcript of telephone conversation, October 9, 1981, 11:08 a.m. (Rico and unidentified receptionist at Borders' office).

23. Tape recording and transcript of telephone conversation by Roger Shuy, October 9, 1981, 11:46 a.m. (Rico and Borders). *See* Impeachment Inquiry at 80–81.

24. Tape recording and FBI transcript of telephone conversation, October 9, 1981, 11:58 a.m. (Borders and unidentified receptionist).

25. Tape recording and transcript of telephone conversation by Roger Shuy, October 9, 1981, 12:15 p.m. (Rico and Borders). *See* Impeachment Inquiry at 83–84.

26. Tape recording of conversation, July 16, 1985 (Rivero and Gordon).

27. Tape recording of conversation, July 16, 1985 (Rivero and Gordon).

28. Tape recording of conversation, August 12, 1985 (Rivero and Gordon).

29. Tape recording of conversation, August 20, 1985 (Rivero and Gordon).

30. Tape recording of conversation, August 21, 1985, 1:22 p.m. (Rivero, Gordon and Gino).

31. Tape recording of conversation, August 22, 1985, 12:50 p.m. (Rivero, Clark, Martin and Ferguson).

32. Tape recording of conversation, August 29, 1985, 12:03 p.m. (Gino and Gordon).

33. Tape recording of conversation, August 29, 1985, 5:16 p.m. (Rivero and Gordon).

34. Tape recording of conversation, September 3, 1985 (Gino, Rivero and Gordon).

35. Tape recording of conversation, September 4, 1985, 10:24 a.m. (Rivero and Gordon).

36. Tape recording of conversation, September 4, 1985, 1:08 p.m. (Gino, Gordon and Rivero).

37. Tape recording of conversation, September 6, 1985, 8:58 a.m. (Ferguson and Gordon).

38. Tape recording of conversation, September 6, 1985, 9:23 a.m. (Gordon and Bone-hill).

39. Tape recording of conversation, September 6, 1985, 9:31 a.m. (Gordon and Rivero).

40. Tape recording of conversation, September 6, 1985, 10:34 a.m. (Gordon and Bone-hill).

41. Tape recording of conversation, September 6, 1985, 10:42 a.m. (Gordon and Rivero).

42. Tape recording of conversation, September 9, 1985, 11:04 a.m. (Gordon and Bonehill).

43. Tape recording of conversation, September 10, 1985, 10:10 a.m. (Rivero and Gordon).

44. Tape recording of conversation, September 10, 1985 (Rivero, Gordon and Nahay).

45. Tape recording of conversation, September 11, 1985, 10:01 a.m. (Rivero and Gordon).

46. Tape recording of conversation, September 12, 1985, 10:27 a.m. (Ferguson and Gordon).

47. Tape recording of conversation, September 12, 1985, 10:56 a.m. (Gordon and Rivero).

48. Tape recording of conversation, September 25, 1985 (Rivero and Gordon).

49. Tape recording of conversation, September 30, 1985, 1:06 p.m. (Rivero, Gordon, Clark and Ferguson).

50. Tape recording of conversation, October 1, 1985, 12:40 p.m. (Rivero and Gordon).

51. Tape recording of conversation, October 8, 1985, 12:23 p.m. (Rivero and Gordon).

52. Tape recording of conversation, October 11, 1985 (Rivero, Ferguson and Morrison).

53. Tape recording of conversation, December 18, 1985, 12:09 p.m. (Gordon, Morrison, Younk, Gould and Ferguson).

54. Tape recording of conversation, January 17, 1986 (Gordon, Clark and Ferguson).

E. OTHER FBI AND GOVERNMENT DOCUMENTS

1. FBI 302, Interview of Judge Alcee L. Hastings, October 9, 1981. *See* Appendix II, Part 1 at 391–93; Part 3 at 2120–22.

2. FBI 302, Interview of Essie Thompson, October 10, 1981. *See* Appendix II, Part 3 at 2572–73.

3. FBI Arrest Log of Special Agent Dale Bird, October 9, 1981. *See* Appendix II, Part 1 at 354–57; Part 2 at 1852–55.

4. FBI Surveillance Log, July 21, 1981. *See Appendix II, Part 2, at 1296–98.*

5. FBI Surveillance Log, August 21, 1981. See Appendix II, Part 2, at 1336–38.

6. FBI Surveillance Log, August 22, 1981. See Appendix II, Part 2, at 1344–45.

7. FBI Surveillance Log, October 9, 1981. See Appendix II, Part 2, at 1833–37.

8. Report of Investigation, January 6, 1977. See Appendix II, Part 1, at 591.

9. FBI Document No. 5100, List of Cases Assigned to Judge Alcee L. Hastings, October 22, 1979 through September 24, 1981. *See* Appendix II, Part 1 at 460–64.

10. Report of the FBI Laboratory, December 10, 1981. *See* Appendix II, Part 3 at 2700.

11. FBI Report of Laboratory Examination, December 13, 1982. *See* Appendix II, Part 3 at 2698.

12. FBI teletype, March 6, 1986. *See* Impeachment Inquiry, Exhibit E at 576–577.

13. FBI Teletype, May 1, 1986. *See* Impeachment Inquiry, Exhibit H at 590–611.

14. FBI Teletype, May 21, 1986.

15. FBI 302, Interview of Mayor Stephen Clark, February 28–March 5, 1986.

16. FBI 302, Interview of Mayor Stephen Clark, March 10, 1986.

17. FBI 302, service of grand jury subpoena, March 14, 1986.

18. FBI report of interview of Stephen Clark re: Alcee Hastings' application to the federal bench, April 9, 1979.

F. COURT DOCUMENTS AND OPINIONS

1. *United States* v. *Hastings*, No. 81–596–Cr–ETG.

a. Grand Jury Testimony of Jeffrey Miller, Daniel Simons and Marilyn Carter. *See* Appendix II, Part 2 at 1734, 1736–37 and 1757.

b. Indictment *See* Appendix II, Part 3 at 2158–64.

c. Record on Appeal, Volumes 1-27.

d. Supplemental Record on Appeal, Volumes 1-2.

e. Defendant's Reciprocal Discovery Inventory No. 1. *See* Appendix II, Part 3 at 2272.

f. Defendant's Supplemental Discovery Inventory, December 1, 1982. *See* Appendix II, Part 3 at 2702–04.

g. Verdict, February 4, 1983.

2. *United States* v. *Borders*, No. Cr–82–75–A.

a. Transcript of Proceedings, Volumes I–VI.

3. *United States* v. *Frank Romano*, No. 78–364–Cr–ALH.

a. Indictment. *See* Appendix II, Part 1 at 421–56.

b. Record on Appeal, Volumes I–XXII.

c. Verdict *See* Appendix II, Part 1 at 486.

d. Presentence Reports, Thomas and Frank Romano, May 5, 1981. *See* Appendix II, Part 2 at 1173–75.

4. *United States* v. *Dredge*, Cr. No. R–81–0209.

a. Indictment, April 29, 1981. *See* Appendix II, Part 1 at 814–25.
b. Docket Sheet. *See* Appendix II, Part 1 at 798–812.
c. Notice of Arraignment, May 14, 1981. *See* Appendix II, Part 1 at 834.
d. Notice of Appearance, June 12, 1981. *See* Appendix II, Part 1 at 925.
e. Agreement Letters, September 11, 1981 and October 6, 1981.
5. *United States* v. *Pride,* Cr–77–214.
a. Docket Sheet. *See* Appendix II, Part 1 at 405.
b. Judgment and Probation/Commitment Order, December 28, 1977. *See* Appendix II, Part 1 at 411.
c. *United States* v. *Pride,* No. 78–5045, slip op. (4th Cir., December 11, 1979) (per curiam).
d. Disposition Sheet, March 19, 1980. *See* Appendix II, Part at 469 and 566.
6. *United States* v. *Accardo,* No. 81–230–Cr–ALH.
a. Indictment.
b. Docket Sheet.
c. Hearing Transcript, July 8, 1981. *See* Appendix II, Part 1 at 909–12.
7. *Borders* v. *Reagan,* C.A. No. 81–1312.
a. Docket Sheet.
b. Order, July 7, 1981. *See* Appendix II, Part 2 at 974.
8. *United States* v. *Martino,* No. 78–3611, slip op. at 8274–8276 (5th Cir. June 19, 1981), *vacated* 648 F.2d 367 (1981).
9. *United States* v. *Peacock,* 654 F.2d 339 (5th Cir. 1981).
10. Courtroom Deputy Diary, April 9, 1981. *See* Appendix II, Part 2 at 987.
11. *In The Matter of the Application of the United States of America for an Order Authorizing the Interception of Wire Communications, Misc. No. 412–Hastings.*
a. Application and exhibits thereto, July 15, 1985.
b. Affidavit in Support of Application, July 15, 1985.
c. Sealing Order, July 15, 1985.
d. Order Authorizing th Interception of Wire Communications, July 15, 1985.
e. Redacted (for Southern Bell) Order Authorizing Interception of Wire Communications, July 15, 1985.
f. Minimization Instructions.
g. Order Authorizing an Extension for Thirty (30) Days of Pen Register Devices, July 15, 1985.
h. First Progress Report and Sealing Order, July 22, 1985.
i. Second Progress Report and Sealing Order, July 29, 1985.
j. Third Progress Report and Sealing Order, August 5, 1985.
k. Fourth Progress Report, August 12, 1985, and Sealing Order, August 13, 1985.
l. Fifth Progress Report, August 14, 1985, and Sealing Order, August 15, 1985.
m. Application (for an Order Authorizing the Continued Interception of Wire Communications), August 15, 1985.
n. Affidavit in Support of Application, August 15, 1985.
o. Sealing Order, August 15, 1985.
p. Order Authorizing the Interception of Wire Communications, August 15, 1985.
q. Redacted (for Southern Bell) Order Authorizing Interception of Wire Communications, August 15, 1985.
r. Minimization Instructions.
s. Order Authorizing an Extension for Thirty (30) Days of Pen Register Devices, August 15, 1985.
t. First Progress Report and Sealing Order, August 22, 1985.
u. Second Progress Report and Sealing Order, August 29, 1985.
v. Third Progress Report and Sealing Order, September 5, 1985.
w. Fourth Progress Report (redacted version submitted to Judge Hastings) and Sealing Order, September 12, 1985.
x. Fourth Progress Report (unredacted version submitted to Chief Judge King) and Sealing Orders, September 12, 1985.
y. Fifth Progress Report (redacted version submitted to Judge Hastings) and Sealing Order, September 16, 1985.
z. Fifth Progress Report (redacted version submitted to Chief Judge King) and Sealing Order, September 15, 1985.
12. Plea Agreement of Kevin Gordon, November 20, 1985. *See* Exhibit F to Hearings Volume.
13. Grand Jury subpoena for Stephen P. Clark, February 27, 1986.
14. Return of Service of Grand Jury Subpoena, March 14, 1986.

G. JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT

1. In the Matter of Certain Complaints Against United States District Judge Alcee L. Hastings

a. Complaint, *In Re: Alcee J. Hastings, U.S. District Judge, Southern District of Florida,* March 17, 1983. *See* Appendix II, Part 3 at 2875–83.

b. Order (Appointing Investigating Committee), March 29, 1983. *See* Appendix II, Part 3 at 2886–89.

c. Order (appointing John Doar), April 13, 1983. *See* Appendix II, Part 3 at 2891–93.

d. Order (appointing Stewart Webb, Jr.), May 10, 1983. *See* Appendix II, Part 3 at 2895.

e. Transcript of Proceedings before Investigating Committee, Days 1–28.

f. Report of the Investigating Committee to the Judicial Council of the Eleventh Circuit.

g. Special and Limited Appearance of the Honorable Alcee L. Hastings, U.S. District Judge, May 16, 1985. *See* Appendix II, Part 3 at 2908–14.

2. Record of Proceedings before a Special Committee for the Judicial Council of the Eleventh Circuit In the Matter of a Complaint filed by William F. Weld. (As submitted by Judge Alcee Hastings to the House of Representatives Subcommittee on Criminal Justice on June 9, 1988).

H. MEMORANDA

1. Memorandum from Neil Sonnett to File, April 16, 1981. *See* Appendix II, Part 1 at 668.

2. Memorandum from John Owens to File, July 28, 1981. *See* Appendix II, Part 2 at 1279–83 and 1290–94.

3. Memorandum from Martha P. Rogers to File, July 29, 1981. *See* Appendix II, Part 2 at 1268–71.

4. Memorandum from Special Agent John J. Simmons, Jr. to Special Agent in Charge, November 25, 1981. *See* Appendix II, Part 2 at 1871–74.

5. Memorandum from Jack Swerling to File, January 25, 1982. *See* Appendix II, Part 3 at 2183–85.

6. Interoffice Memorandum from Joel Hirschhorn to Judge Alcee L. Hastings and Joel Hirschhorn, January 22, 1982. *See* Appendix II, Part 3 at 2224–26 and 2732– 37.

7. Memorandum from Jack Swerling to File, April 29, 1982. *See* Appendix II, Part 3 at 2294–95.

I. LETTERS

1. Letter from Maude P. Pride to Judge Alcee L. Hastings, October 16, 1980. *See* Appendix II, Part 1 at 471–73.

2. Letter from Judge Alcee L. Hastings to Captain Earle Wallo, March 10, 1981. *See* Appendix II, Part 2 at 1039.

3. Letter from Captain Earle Wallo to Judge Alcee L. Hastings, March 11, 1981. *See* Appendix II, Part 2 at 1041.

4. Letter from James Deichert to Judge Alcee L. Hastings, April 23, 1981. *See* Appendix II, Part 1 at 711.

5. Letter from Captain Earle Wallo to Judge Alcee L. Hastings, May 13, 1981. *See* Appendix II, Part 2 at 1043.

6. Letter from Barbara E. Whiting, Re: Dinner Cruise Honoring William Borders, September 21, 1981. *See* Appendix II, Part 1 at 347.

7. Letter from Jean A. Moran (Financial Officer of Columbian Urban League), September 30, 1981. *See* Appendix II, Part 1 at 571.

8. Letter from James E. Dennis (President of Dennis & Associates, Inc.), September 30, 1981. *See* Appendix II, Part 1 at 573.

9. Letter from Patricia Williams to Judge Alcee L. Hastings, October 14, 1981. *See* Appendix II, Part 3 at 2156 and 2850.

10. Letter from Reid Weingarten to Joel Hirschhorn, January 19, 1982. *See* Appendix II, Part 3 at 2200–03.

11. Letter from Reid Weingarten to H.T. Smith, January 19, 1982. *See* Appendix II, Part 3 at 2204–07.

12. Letter from Joel Hirschhorn to Reid Weingarten, January 25, 1982. *See* Appendix II, Part 3 at 2261–62.

13. Letter from Leroy Kelly (The Florida Bar) re: William Borders is not a member, March 2, 1988.

J. MISCELLANEOUS

1. *In the Matter of Hemphill P. Pride, II,* Complaint, December 22, 1977. *See* Appendix II, Part 1 at 413–14.

2. *In the Matter of Hemphill P. Pride, II,* Certification of the Record of Commissioners on Grievances and Discipline to the South Carolina Supreme Court, September 5, 1980. *See* Appendix II, Part 1 at 416–17.

3. *In the Matter of Hemphill P. Pride, II,* Indefinite Suspension, May 26, 1981. *See* Appendix II, Part 1 at 401–03 and 893–95.

4. Permission to Travel for Hemphill Pride, January 20, 1982. *See* Appendix II, Part 3 at 2220.

5. Personal File of Jeffrey Miller, *United States* v. *Romano. See* Appendix II, Part 2 at 1104–14.

6. New York Times, "16 Indicated Over Union Fund Use," June 5, 1981. *See* Appendix II, Part 1 at 914.

7. Chicago Tribune, "Accardo Indicted In Union Fraud," June 5, 1981. *See* Appendix II, Part 1 at 916–17.

8. Miami Herald, "Metro Mayor Quizzed About Information Leak," March 27, 1986. *See* Impeachment Inquiry, Exhibit J at 615.

9. Invitation for Dinner Honoring William Borders. *See* Appendix II, Part 1 at 349.

10. Certification, In the Matter of Certain Complaints Against U.S. District Judge Alcee L. Hastings. *See* Appendix II, Part 3 at 2991–96.

11. Report of the Proceedings of the Judicial Conference of the United States, March 17, 1987, at 41–42.

12. Appointment Book of William Borders. *See* Impeachment Inquiry, Exhibit C at 537–61.

13. MMAP Program Brochure September 6, 1985. *See* Impeachment Inquiry, Exhibit D at 563–74.

14. Floor Plan of Hyatt Regency Hotel, Miami, Florida. *See* Appendix III, at 309–311.

15. 1981 Calendar.

16. *Impeachment Inquiry:* Hearings of The Subcommittee on Criminal Justice of the Committee on the Judiciary, House of Representatives, 100th Cong., 2nd Sess., May 18, 19, 24, 25, 26, June 1 and 9, 1988.

EXHIBIT 2

[In the Senate of the United States sitting as a court of impeachment]

In re impeachment of Judge Alcee L. Hastings.

PROPOSED STIPULATION OF FACTS

The House of Representatives, through its Managers, proposes that the parties stipulate to the following facts for the purpose of this action only:

1. Alcee L. Hastings was sworn in as a United States District Judge for the Southern District of Florida on October 22, 1979.

2. William Borders participated in Judge Hastings' federal investiture ceremony.

3. In 1981, William Borders was an attorney practicing in Washington, D.C.

4. As of January 1981, Judge Hastings and William Borders had known each other for eleven or twelve years.

5. As of January 1981, Judge Hastings and William Borders had a long standing personal and professional relationship, stemming, in part, from their active roles in the National Bar Association, an association of black attorneys.

6. The criminal case of *United States* v. *Romano,* Crim. No. 78-364, was assigned to Judge Hastings on October 24, 1979.

7. The *Romano* case was based on a 21-count indictment of two brothers, Thomas and Frank Romano. The charges against the defendants included conducting an enterprise through a pattern of racketeering activity, investing racketeering income in a legitimate enterprise, theft and embezzlement from an employees benefit plan, wire fraud, mail fraud and income tax evasion. The charges were brought under the Racketeer Influenced and Corrupt Organizations statute ["RICO"] which required, under certain circumstances, the forfeiture of property illegally obtained.

8. In December 1980, Thomas and Frank Romano were tried and convicted by a jury with Judge Hastings presiding.

9. During the course of the *Romano* trial a proffer was made to Judge Hastings that Thomas and Frank Romano had a history of making payoffs and kickbacks.

10. During the course of the *Romano* trial, evidence was presented that the Romano brothers had embezzled more than $1,000,000 from an employee's benefit plan.

11. Thomas and Frank Romano waived their right to a jury on the forfeiture matter.

12. Following the conviction of Thomas and Frank Romano, Judge Hastings held hearings on December 30, 1980 and February 20, 1981 to determine whether certain financial interests of the Romano brothers should be forfeited because the interests were the product of racketeering activities and therefore subject to forfeiture under RICO.

13. On February 17, 1981, Neal Sonnett entered his appearance on behalf of Thomas and Frank Romano as additional counsel in the case then pending before Judge Hastings.

14. On February 20, 1981, Judge Hastings reserved ruling on the forfeiture in the *Romano* case, requested that the parties make further submissions and stated that he would schedule the sentencing after he had received the submissions by the parties.

15. On April 23, 1981, one of Judge Hastings' law clerks, Jeffrey Miller, informed James Deichert, the Assistant United States Attorney in the *Romano* case, that the sentencing in the *Romano* case would be held on May 11, 1981.

16. On April 28, 1981, a Notice of Sentencing was filed in the *Romano* case, scheduling the sentencing for May 11, 1981 at 1:00 p.m.

17. On May 4, 1981, Judge Hastings entered an order in the *Romano* case requiring Thomas and Frank Romano to forfeit a total of $1,162,016 to the United States. He adopted all of the proposed findings of fact submitted by the prosecution.

18. On May 11, 1981, Thomas and Frank Romano appeared for sentencing and their counsel, Neal Sonnet, requested a continuance in order to present additional arguments to the court. Counsel for the United States opposed the continuance on the grounds that five months had passed since the conviction and all legal issues had been fully briefed by the parties.

19. On May 11, 1981, Judge Hastings continued the sentencing of Thomas and Frank Romano to a date to be decided by the parties.

20. On June 5, 1981, Thomas and Frank Romano filed a motion for reconsideration of the May 4, 1981, forfeiture order issued by Judge Hastings.

21. On June 19, 1981, a three-judge panel of the Fifth Circuit issued an opinion in the case of *United States* v. *Martino*, 648 F.2d 367, in which the court held that in using the term "interest" in 18 U.S.C. Section 1963(a) "Congress did not intend to include . . . the fruits and profits obtained from a pattern of racketeering activity" and reversed in part a forfeiture order which had forfeited insurance proceeds received as a result of an arson.

22. On July 8, 1981, Thomas and Frank Romano appeared before Judge Hastings for sentencing. At that time the parties argued the effect of the *Martino* decision on the *Romano* forfeiture.

23. The briefs submitted by the parties in the *Romano* case prior to the July 8, 1981 sentencing hearing argued the effect of the *Martino* decision on the *Romano* forfeiture, and Judge Hastings stated at the hearing that he had read the briefs and was familiar with the *Martino* decision.

24. At the July 8, 1981 sentencing hearing, Judge Hastings confirmed his May 4, 1981 forfeiture order, stating "I will allow the forfeitures as previously set out by the Court to be maintained, and . . . a brief order will be prepared that will recite the reasoning of the Court, at least insofar as the new matters that have arisen, more specifically the cases cited by counsel up to this time."

25. On July 8, 1981, Judge Hastings sentenced each of the Romanos to three years imprisonment to be followed by a three-year period of probation and advised them of their rights to appeal.

26. The sentences imposed on Thomas and Frank Romano on July 8, 1981 were consistent with the recommendations of the United States Probation Office.

27. On July 14, 1981, Thomas and Frank Romano filed notices of appeal from the final judgement and order or conviction, and from the judgement of forfeiture issued from the bench on July 8, 1981.

28. On August 31, 1981, William Dredge told representatives of the FBI that during a meeting with William Borders in Washington, D.C. occurring sometime between August 27–29, 1981, Borders stated that he wanted to deal with Thomas and Frank Romano as soon as possible, but he would only deal with Thomas and Frank Romano themselves, not with a representative.

29. On September 10, 1981, at 1:29 p.m., William Dredge called William Borders at his law office and said "they [Thomas and Frank Romano] are ready to deal."

30. During the September 10, 1981, telephone conversation between William Dredge and William Borders, beginning at 1:29 p.m., Dredge arranged to meet Borders at the Miami International Airport on September 12, 1981, for the purpose of introducing Borders to "Frank Romano."

31. The FBI arranged for H. Paul Rico, a retired FBI agent, to impersonate Frank Romano.

32. FBI Special Agent William Murphy was present with William Dredge during the September 10, 1981 telephone conversation between Dredge and William Borders, beginning at 1:29 p.m.

33. From March through October 1981, Cynthia Rogers was a secretary and receptionist at the law offices of William Borders.

34. On September 10, 1981, at approximately 12:45 p.m., Cynthia Rogers recorded in the telephone log at William Borders' office the following travel reservations for Borders: Fri—Air Fla. #131: 7:30—9:45; Sat—Eastern #890: 9:25-9:51 a.m.; Sun—Delta—West Palm #608: 7 a.m.-9:49—Atlanta.

35. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' office reflecting a call at 9:35 a.m. from Judge Hastings to William Borders with the message "not coming to D.C. today. Call him between 4:30 and 5 today; will be in his office for call."

36. On September 10, 1981, at 4:40 p.m., a call, lasting one minute or less, was placed from William Borders' law office to Judge Hastings' chambers.

37. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law office reflecting a call at 5:10 p.m. from Judge Hastings to Borders with the following message: "He'll be waiting for call—Have them get him off the bench. He'll also let them know if you call to get him to phone."

38. On September 10, 1981, at 5:34 p.m., a call, lasting four minutes, was placed from William Borders' law office to Judge Hastings' chambers.

39. On September 11, 1981, Judge Hastings was scheduled to leave Miami International Airport at 3:48 p.m. and arrive in Washington, D.C. at 6 p.m.

40. On September 11, 1981, Judge Hastings' flight was delayed and he actually left Miami International Airport at 5:50 p.m. and arrived at Washington National Airport at 8:04 p.m.

41. On September 11, 1981, Judge Hastings made two calls from the Miami International Airport to the office of William Borders. These calls were charged to Judge Hastings' residence phone.

42. On September 11, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law offices reflecting a call at 4:20 p.m. from Judge Hastings to William Borders with the message "flight further delayed; not leaving until 5."

43. On September 11, 1981, William Borders was scheduled to leave Washington National Airport for Miami, Florida at 7:30 p.m. on Air Florida flight 131.

44. On September 11, 1981, William Borders did not take Air Florida flight 131 for which he had reservations and instead departed from Washington National Airport on Eastern Airlines flight 459 which was scheduled to depart at 9:20 p.m.

45. On September 12, 1981, William Borders arrived in Miami, Florida at 1:30 a.m. via Eastern Airlines flight 655 from Atlanta.

46. On September 11, 1981, Judge Hastings registered at the Sheraton-Washington Hotel in Washington, D.C. at 10:14 p.m.

47. On September 12, 1981, at about 8:25 a.m., William Dredge William Borders and H. Paul Rico met at the Miami International Airport.

48. On September 12, 1981, at about 8:25 a.m., William Dredge identified H. Paul Rico as Frank Romano and introduced him to William Borders.

49. On September 12, 1981, shortly after 8:25 a.m., William Borders and H. Paul Rico met out of the presence of William Dredge.

50. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders told H. Paul Rico that within ten days of Rico's paying $150,000, an order would be signed returning a substantial amount of the property Thomas and Frank Romano had lost [in the forfeiture].

51. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders wrote the following on a paper which he then showed to H. Paul Rico: "$150,000" and "within ten days a order will be signed."

52. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders told H. Paul Rico that "the other will follow", i.e., the sentences would be reduced, once Thomas and Frank Romano filed a "motion for mitigation."

53. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., in response to H. Paul Rico's request for assurances, William Borders suggested that

Rico give the money to William Dredge, and that Dredge would then hold the money until the "first part" was done, i.e., the order returning the property was signed.

54. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., H. Paul Rico rejected William Borders suggestion that the money be held by William Dredge until the order returning the property was signed, and suggested as an alternative means of proving that the judge was in on the bribery scheme that Borders would have Judge Hastings appear at an appointed time and place.

55. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders selected Wednesday, September 16, 1981, as the date for Judge Hastings' appearance. Borders left it to Rico to select the time and place.

56. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., H. Paul Rico selected 8 p.m. at the main dining room of the Fontainebleau Hotel in Miami Beach, Florida as the time and place for Judge Hastings' appearance.

57. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., H. Paul Rico and William Borders agreed to meet again at the Miami International Airport on September 19, 1981, at which time Rico would make a payment on the bribery deal.

58. At the time of the September 12, 1981, meeting between H. Paul Rico and William Borders, Borders had no official connection with the *Romano* case, nor was he a member of the Florida bar.

59. In 1981, in the United States District Court for the Southern District of Florida, the official files of criminal matters were kept in the chambers of the judge assigned to the case rather than in the clerk's office.

60. On September 12, 1981, at approximately 11 a.m., as part of an FBI surveillance, William Borders was observed boarding Eastern Airlines Flight 890, departing from Miami, Florida for West Palm Beach, Florida.

61. On September 12, 1981, William Borders arrived at West Palm Beach, Florida after 11:30 a.m.

62. On September 12, 1981, David L. Thomas, a cousin of William Borders, met Borders at the West Palm Beach airport.

63. On September 12, 1981, David L. Thomas drove William Borders from West Palm Beach, Florida to Fort Pierce, Florida.

64. On September 12, 13 and 14, 1981, a family reunion involving the family of William Borders was scheduled in Fort Pierce, Florida.

65. Prior to September 10, 1981, William Borders was planning to attend his family reunion.

66. The drive by David L. Thomas and William Borders from West Palm Beach, Florida to Fort Pierce, Florida on September 12, 1981, took about an hour and twenty minutes.

67. On September 12, 1981, at 1:06 p.m., William Borders called Eastern Airlines and made a reservation for Eastern Airlines flight 532, from West Palm Beach, Florida, to Atlanta, Georgia, for September 12, 1981, scheduled to depart at 4:12 p.m., and for Eastern Airlines flight 904, Atlanta, Georgia to Washington, D.C., for September 12, 1981, scheduled to depart Atlanta at 6:45 p.m.

68. On September 12, 1981, at 3:30 p.m., William Borders called Eastern Airlines and cancelled his reservation for Eastern Airlines flight 532 from West Palm Beach, Florida to Atlanta, Georgia, and made a reservation for Eastern Airlines flight 266 from Melbourne, Florida, to Atlanta, Georgia for September 12, 1981, scheduled to depart Melbourne, Florida at 4:35 p.m.

69. On September 12, 1981, at 4:39 p.m., at the Melbourne Airport, William Borders cancelled his reservation for Eastern Airlines flights 266 (Melbourne to Atlanta) and 904 (Atlanta to Washington), and made a reservation on Eastern Airlines flight 858 from Orlando, Florida to Washington, D.C., for September 12, 1981, scheduled to depart Orlando at 8:08 p.m. and to arrive in Washington at 10 p.m.

70. On September 12, 1981, at 6:02 p.m. at the Orlando, Florida airport, William Borders cancelled his reservation for Eastern Airlines flight 858 (Orlando to Washington) and made a reservation for Eastern Airlines flight 664, Orlando to Baltimore-Washington International Airport, for September 12, 1981, scheduled to depart Orlando at 6:45 p.m. and arrive at Baltimore-Washington International Airport at 8:35 p.m.

71. On September 12, 1981, William Borders flew from Orlando, Florida to Baltimore-Washington International Airport on Eastern Airlines flight 664.

72. On September 12, 1981, Eastern Airlines flight number 664 arrived at the gate at Baltimore-Washington International Airport at 8:58 p.m.

73. On September 12, 1981, Judge Hastings was registered at the Sheraton-Washington Hotel, room 7022.

74. On September 12, 1981, Jessie McCrary, a Florida attorney, was registered at the Sheraton-Washington Hotel, room 7024, the room next to Judge Hastings.

75. During all of 1981, Jessie McCrary, Alcee Hastings, and William Borders were friends.

76. From March through October 1981, William Borders was a social acquaintance of Madeline Petty, and could on occasion be reached at her residence.

77. On September 15, 1981, William Borders and Madeline Petty flew from Washington, D.C. to Las Vegas, Nevada.

78. The purpose of the September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, was to attend the Sugar Ray Leonard—Tommy Hearns championship fight.

79. The September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, had been planned since at least September 1, 1981.

80. William Borders did not ask Madeline Petty to keep secret the fact that they were planning to attend the championship fight in Las Vegas, Nevada on September 16, 1981.

81. William Borders was a boxing fan and attended virtually every championship fight that was held in the continental United States.

82. In 1981, it was well known among friends of William Borders that he as a boxing fan and attended virtually every championship fight held in the continental United States.

83. Judge Hastings called Essie Thompson on September 15, 1981, and invited her out for dinner on September 16, 1981.

84. Judge Hastings called Essie Thompson on September 16, 1981, to arrange the time that he would pick her up for dinner that night.

85. Judge Hastings did not mention in either of his calls to Essie Thompson on September 15 and 16, 1981, that they would be meeting anyone for dinner on the evening of September 16, 1981.

86. At some time prior to 7:45 p.m. on September 16, 1981, Judge Hastings made reservations for two for dinner at the Fontainebleau Hotel main dining room on September 16, 1981.

87. On September 16, 1981, the maitre d' at the Fontainebleau Hotel seated Judge Hastings and Essie Thompson at a table for four and immediately took away two place settings.

88. On September 16, 1981, Judge Hastings did not protest when the maitre d' at the Fontainebleau Hotel took away two of the four place settings at the table where Judge Hastings and Essie Thompson were seated.

89. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not have William Borders paged.

90. On September 18, 1981, William Borders and Madeline Petty flew from Las Vegas, Nevada to Washington National Airport. Borders did not leave the Washington National Airport and he departed at 9:20 p.m. for Miami, Florida, via Eastern Airlines flights 459 and 655.

91. On September 19, 1981, William Borders registered at the Miami International Airport Hotel at 2:25 a.m.

92. On September 19, 1981, William Borders and H. Paul Rico met at the Miami International Airport Hotel at approximately 10 a.m.

93. During their meeting on September 19, 1981, beginning at approximately 10 a.m., H. Paul Rico told William Borders that Judge Hastings had appeared as Borders had promised, and that Rico had the bribe money in a locker at the airport.

94. During their meeting on September 19, 1981, beginning at approximately 10 a.m., H. Paul Rico gave William Borders a newspaper in which there was $25,000 in cash.

95. During their meeting on September 19, 1981, beginning at approximately 10 a.m., William Borders and H. Paul Rico agreed that the balance of the bribe money would be paid "as soon as the other [was] done", i.e., as soon as the order returning the forfeited property was signed.

96. During their meeting on September 19, beginning at approximately 10 a.m., William Borders and H. Paul Rico agreed to meet again on October 3, 1981, at the Miami International Airport, at which time the final installment of the bribe money would be paid.

97. At their 10 a.m. meeting on September 19, 1981, at the request of William Borders, H. Paul Rico gave Borders his phone number.

98. During the meetings between William Borders and H. Paul Rico on September 12 and September 19, 1981, Rico was wearing a body recorder which recorded their conversations.

99. On September 19, 1981, William Borders left Miami, Florida, for Washington, D.C. on Eastern Airlines flight 190, scheduled to depart the Miami International Airport at 10:55 a.m.

100. As of October 2, 1981, Judge Hastings had not issued an order vacating the previous forfeiture of Thomas and Frank Romano's property.

101. On October 2, 1981, H. Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to federal wiretap authorization.

102. On October 2, 1981, prior to 3 p.m. William Borders received a message that "Frank from Florida" (H. Paul Rico) had called.

103. On Friday, October 2, 1981, at approximately 3 p.m. William Borders was out of his law office but he arranged to have "Frank's" (H. Paul Rico's) call put through to him at another office.

104. On October 2, 1981, at 3:10 p.m. William Borders and H. Paul Rico spoke with each other by telephone and Rico informed Borders that the *Romano* forfeiture order had not yet been issued.

105. During their October 2, 1981 telephone conversation, beginning at 3:10 p.m., William Borders and H. Paul Rico agreed to cancel their previously scheduled meeting for October 3, 1981.

106. During their October 2, 1981 telephone conversation, beginning at 3:10 p.m., H. Paul Rico asked William Borders to call him that night with information on the *Romano* forfeiture order but Borders replied that he didn't know whether he would be able to "find out * * * because of the time" and suggested that Rico call again on Sunday.

107. On October 2, 1981, at 4:50 p.m., William Border's secretary called Judge Hastings' chambers and was told that the judge had left for the day. The call was recorded pursuant to a federal wiretap authorization.

108. On October 4, 1981, at 9:38 a.m., William A. Borders and H. Paul Rico had a telephone conversation, in which Rico inquired about the *Romano* forfeiture order and Borders responded that he had not been able to talk to anybody.

109. On the afternoon of October 4, 1981, William Borders called Judge Hastings' home.

110. Between July 8, 1981, the date of the argument on the motion to reconsider the May 4, 1981 *Romano* forfeiture order, and October 6, 1981, the date the order was issued, there was no additional briefing or argument by the parties on any matter in the *Romano* case.

111. On August 27, 1981, the Fifth Circuit issued an opinion in the case of *United States* v. *Peacock*, which followed Martino.

112. On October 5, 1981, in the morning, Judge Hastings instructed Jeffrey Miller to do the *Romano* forfeiture order that day.

113. Daniel Simons, one of Judge Hastings' law clerks, overheard the conversation between Jeffrey Miller and Judge Hastings on the morning of October 5, 1981, concerning the *Romano* forfeiture order. According to Simons, Judge Hastings seemed somewhat disturbed that Miller had not finished the *Romano* forfeiture order.

114. On October 5, 1981, Jeffrey Miller left Judge Hastings' chambers and drove to his home to work on the *Romano* forfeiture order.

115. On October 5, 1981, at 4:22 p.m., William Borders and H. Paul Rico spoke to each other by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

116. During their October 5, 1981, telephone conversation beginning at approximately 4:22 p.m., William Borders told H. Paul Rico that the *Romano* forfeiture order had not gone out yet, but it had been "taken care of" and would probably go out that day or the first thing the next morning.

117. On October 5, 1981, at 5:12 p.m., William Borders and Judge Hastings had a telephone conversation, which was recorded pursuant to a federal wiretap authorization.

118. On October 6, 1981, an order reversing the forfeiture of $845,000 of the $1,162,016 of Thomas and Frank Romano's property previously ordered forfeited was signed by Judge Hastings and mailed out.

119. On October 6, 1981, at approximately 6 p.m., the *Romano* forfeiture order was mailed special delivery by Marilyn Carter, deputy courtroom clerk for Judge Hastings.

120. On October 6, 1981, John Owens, a Miami strike force attorney, saw Jeffrey Miller and Miller told Owens that he had been working on the *Romano* forfeiture order all day because Judge Hastings wanted the order out that day.

121. On October 7, 1981, at 12:19 p.m., William Borders and H. Paul Rico spoke by telephone, and the conversation was recorded pursuant to a federal wiretap authorization.

122. During their October 7, 1981, telephone conversation, beginning at approximately 12:19 p.m., William Borders told H. Paul Rico that the *Romano* forfeiture order had gone out the previous morning.

123. On October 7, 1981, at 7:39 p.m., William Borders and H. Paul Rico spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

124. During their October 7, 1981 telephone conversation, beginning at approximately 7:39 p.m., H. Paul Rico told William Borders that "everything [was] fine", i.e., the *Romano* forefeiture order had been received, and the two agreed that Rico would come to Washington, D.C. with the final bribe payment on Thursday or Friday, October 8 or 9, 1981.

125. On October 8, 1981, at 9:37 a.m., William Borders and Judge Hastings spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

126. During their October 8, 1981 telephone conversation, beginning at 9:37 a.m., Judge Hastings told Borders that he would be arriving at Washington National Airport the next morning at 10:40 on Eastern flight 130.

127. In the late summer of 1981, the National Bar Association planned a testimonial dinner/boat ride in honor of William Borders, the immediate past president of the organization.

128. Judge Hastings was a co-sponsor of the testimonial dinner/boat ride organized by the National Bar Association in honor of William Borders.

129. The National Bar Association dinner/boat ride in honor of William Borders was scheduled for October 9, 1981.

130. On October 9, 1981, at approximately 10:40 a.m., William Borders met Judge Hastings at gate 20 of the Washington National Airport.

131. After picking up Judge Hastings at the Washington National Airport on the morning of October 9, 1981, William Borders drove with Judge Hastings to the L'Enfant Plaza Hotel, arriving at approximately 10:50 a.m.

132. A suite and an adjoining room at the L'Enfant Plaza Hotel had been reserved for William Borders and Judge Hastings, respectively, beginning October 9, 1981.

133. On October 9, 1981, Borders and Judge Hastings left the L'Enfant Plaza Hotel at approximately 11:17 a.m. and proceeded to William Borders' car, where Judge Hastings placed a briefcase in the trunk. They then drove to the Superior Court of the District of Columbia, 500 Indiana Ave., N.W., Washington, D.C., arriving at 11:22 a.m. and departing at 11:20 a.m.; they then drove to W & W Liquors, 1549 7th St. N.W., Washington, D.C., arriving at 11:38 a.m. and departing at 11:42 a.m.; and then drove to Borders' law office at 1621 New Hampshire Ave., N.W., Washington, D.C., arriving at approximately 11:53 a.m.

134. At approximately 11:53 a.m. on October 9, 1981, Borders parked his car at the rear of his office at 1621 New Hampshire Ave., N.W., Washington, D.C.

135. H. Paul Rico, posing [illegible] Frank Romano, arrived in Washington, D.C. on October 8, 1981, for the purpose of delivering the remainder of the bribe payment to William Borders.

136. At 11:13 a.m. on October 9, 1981, H. Paul Rico called William Borders' law office and left a message for Borders to call him.

137. Upon arriving at his office with Judge Hastings, William Borders picked up a telephone message to call "Frank" at a number listed for the Twin Bridges Marriott Hotel in Arlington, Virginia. Borders returned the call shortly before noon.

138. On October 9, 1981, H. Paul Rico was staying in room 102 at the Twin Bridges Marriott Hotel, Arlington, Virginia, in which the FBI had installed video and audio equipment.

139. When William Borders called H. Paul Rico on October 9, 1981, Rico told Borders that he had "brought all the necessary papers." They agreed to meet at the Twin Bridges Marriott Hotel in about an hour.

140. On October 9, 1981, William Borders left his office at approximately 12:02 p.m. and drove to the Twin Bridges Mariott Hotel, arriving at H. Paul Rico's room less than an hour after they had talked on the telephone.

141. On October 9, 1981, when H. Paul Rico answered William Borders' knock at the door at the Twin Bridges Marriott Hotel, Borders asked Rico, "You got it with you?" Rico told him that "it" was in the room and Borders said, "Get it, I wanna take a ride."

142. On October 9, 1981, when William Borders and H. Paul Rico got into Borders' car, Rico placed a bag containing $125,000 on the seat between them.

143. On October 9, 1981, the FBI pulled over the car being driven by William Borders as soon as Borders started to drive away from the parking lot of the Twin

Bridges Marriott Hotel in Arlington, Virginia. When Borders saw the FBI car, and heard its siren, he said to Rico, "We're busted."

144. On October 9, 1981, at 12:40 p.m., William Borders was placed under arrest by FBI agents, and transported back to room 103 of the Twin Bridges Marriott Hotel.

145. Following his arrest on October 9, 1981 at 1:18 p.m., William Borders requested and received permission to telephone his attorney John Shorter. He then made arrangements for his attorney to come to the Twin Bridges Marriott Hotel.

146. On Friday, October 9, 1981, at 1:31 p.m., attorney John Shorter arrived at room 103 of the Twin Bridges Marriott Hotel. At 1:34 p.m. and 1:42 p.m., William Borders and Shorter spoke privately, and thereafter again spoke privately for several more minutes.

147. At 1:56 p.m. on October 9, 1981, William Borders was escorted by FBI agents from room 103 of the Twin Bridges Marriott Hotel to the Washington FBI field office. At 3:40 p.m., FBI agents took Borders to the United States Magistrate's Office in Alexandria, Virginia. Following a hearing before United States Magistrate W. Harris Grimsley, Borders was remanded to the custody of the United States Marshall.

148. On Friday, October 9, 1981 at 1:55 p.m., FBI Special Agents Dale Bird, Carol Skiles and William Murphy left the Twin Bridges Marriott Hotel for the law office of William Borders at 1621 New Hampshire Ave., N.W., Washington, D.C. They arrived at the office at 2:25 p.m. and found the front door locked.

149. Following the arrest of William Borders, in the mid-afternoon of Friday, October 9, 1981, the Washington, D.C. FBI field office advised Miami FBI personnel to begin interviews of Patricia Williams and the personnel in Judge Hastings' chambers, and to serve a subpoena for office records in Judge Hastings, chambers.

150. Agents of the FBI conducted interviews on October 9, 1981 of persons working in Judge Hastings' Miami and Fort Lauderdale chambers, including Marilyn Carter, Joann Tyson, Barbara Katzen, Daniel Simons, Jeffrey Miller and Alan Ehrlich.

151. In October, 1981, Patricia Williams was an attorney employed by the Equal Employment Opportunity Commission in Miami, Florida, and the fiance of Judge Hastings. She resided at 2401 N.W. 43rd Terrace, Lauderhill, Florida.

152. FBI agents arrived at Judge Hastings' chambers in Miami at approximately 2:50 p.m. and remained there until approximately 5:15 p.m.

153. On October 9, 1981, FBI Special Agents Wendy Loucks and Lawrence Harrigan proceeded from the Miami FBI office to the office of Particia Williams, Suite 412, DuPont Plaza Center, in downtown Miami, Florida, arriving at about 2:50 p.m. After locating Ms. Williams, the agents began the interview at approximately 3 p.m. and continued the interview until about 3:50 p.m.

154. On October 9, 1981, at 2:40 p.m., FBI Special Agents Dale Bird and William Murphy telephoned William Borders' office. Cynthia Rogers answered the telephone and agreed to let the FBI enter the office.

155. FBI agents were present at William Borders' law office on October 9, 1981 to serve a subpoena for Borders' office records.

156. On October 9, 1981, the following attorneys had offices at 1621 New Hampshire Ave., N.W., Washington, D.C.: William Borders, Dudley Williams, James Cobb and Robert L. Bell.

157. On October 9, 1981, Cynthia Rogers was the secretary and receptionist for William Borders and the other attorneys working at 1621 New Hampshire Ave., N.W., Washington, D.C.

158. On October 9, 1981, at approximately 2:50 p.m., Cynthia Rogers told the FBI agents that she was not sure if she should accept service of the subpoena.

159. On October 9, 1981, at approximately 2:50 p.m., FBI Special Agent William Murphy requested that Cynthia Rogers contact John Shorter regarding acceptance of the subpoena for documents from William Borders.

160. On October 9, 1981, at approximately 2:50 p.m., Cynthia Rogers called John Shorter and asked FBI Special Agent William Murphy to speak with Shorter. Murphy got on the telephone and said the FBI had a subpoena for William Borders' office records. Shorter said he would tell Ms. Rogers to accept the subpoena.

161. In this telephone conversation from William Borders' office on October 9, 1981 at approximately 2:50 p.m., FBI Special Agent William Murphy told John Shorter that the FBI wanted to interview Judge Hastings and that they could not locate him.

162. In their telephone conversation on October 9, 1981 at approximately 2:50 p.m., FBI Special Agent William Murphy told John Shorter that if Shorter was able

to locate Judge Hastings, he should give him Murphy's name, FBI Special Agent Dale Bird's name and the Washington FBI Field Office telephone number.

163. Later William Borders left his office on October 9, 1981 at approximately 12:02 p.m, Judge Hastings left that office, and walked to a book store, and from there to a clothes store, where he spoke with Brenda Russell, the owner, who was a friend, and used her telephone.

164. On October 9, 1981, after leaving Brenda Russell's store, Judge Hastings went to two luggage shops, and purchased a leather purse.

165. On October 9, 1981, after leaving William Borders' office and making stops at several downtown shops, at approximately 1:00 p.m. Judge Hastings returned to his room at the L'Enfant Plaza Hotel and ordered lunch to be sent up by room service.

166. Shortly after Judge Hastings ordered room service at the L'Enfant Plaza Hotel on October 9, 1981, Hemphill Pride came to Judge Hastings' room. Judge Hastings then ordered additional food from room service and the men had lunch together in Judge Hastings' room.

167. After arriving at the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings sent his suit to the hotel valet service.

168. Judge Hastings left the L'Enfant Plaza Hotel for Florida on October 9, 1981 without picking up his suit from the hotel valet service.

169. Judge Hastings left the hotel for Florida on October 9, 1981 without paying for the cleaning of his suit by that hotel valet service or for the room service charges that he had incurred.

170. Judge Hastings left the L'Enfant Plaza Hotel to go to Florida on October 9, 1981 without checking out.

171. The computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 reflect that only one call was made from the hotel to area code 305, which is the area code for south Florida. That call was made at "22:00" (10:00 p.m.), and was placed from a room other than the one occupied by Judge Hastings.

172. On October 9, 1981, the Chesapeake and Potomac Telephone Company ["C&P"] followed the procedure and practice of maintaining a computer record of all telephone calls from any guest's room at the L'Enfant Plaza Hotel. For each long distance call charged to a room, C&P furnished to the L'Enfant Plaza Hotel a computer run showing, among other things, the date and time of the call, the room number from which the call was placed, the area code and the telephone number called, and the charge for the call. The computer run lists long distance calls in sequential order according to the termination time of the call.

173. The C&P computer runs for October 9 and 10, 1981 show no long distance calls made from room 11229 of the L'Enfant Plaza Hotel until the morning of October 10, 1981 at 1:56 a.m.

174. The telephone records of Judge Hastings' residence and chambers, and the telephone records of Patricia Williams' residence, do not reflect any calls from the L'Enfant Plaza Hotel in Washington, D.C. on Ocober 9, 1981 being charged to those numbers.

175. On October 9, 1981, Judge Hastings was registered for room 11229 of the L'Enfant Plaza Hotel.

176. On October 9, 1981, commencing at about 3 p.m. and continuing until after 3:50 p.m., Patricia Williams was interviewed by FBI Special Agents Wendy Loucks and Lawrence Harrigan. During the interview, Ms. Williams was interrupted once by the office receptionist, to tell her that she had a telephone call. The name of the caller was neither William Borders nor Judge Hastings. After taking the telephone call, Ms. Williams told the FBI Special Agents that the caller was a client inquiring about his upcoming hearing.

177. In an attempt to locate Judge Hastings, at 2:50 p.m., on October 9, 1981, FBI Special Agents left William Borders' office to go to the L'Enfant Plaza Hotel. They arrived at the hotel at about 3:10 p.m.

178. On arrival at the L'Enfant Plaza Hotel at about 3:10 p.m. on October 9, 1981, FBI Special Agent William Murphy called Judge Hastings' room. There was no answer. Murphy called several times over the next few minutes and got no answer. At 3:30 p.m., Murphy again called Judge Hastings' room. There was no answer. Murphy and the other FBI Special Agents accompanying him then proceeded to Judge Hastings' room, and knocked at his door. There was no response. At approximately 3:35 p.m. Murphy and the other FBI Special Agents left the hotel.

179. By around 3:00 p.m. on October 9, 1981, Judge Hastings was aware that the FBI in Washington, D.C. wanted to interview him.

180. Judge Hastings left the L'Enfant Plaza Hotel at approximately 3:35 or 3:40 p.m. on October 9, 1981.

181. On October 9, 1981, there was a 4:35 p.m. direct flight to Miami, Florida, leaving from Washington National Airport, with 14 seats available.

182. Washington National Airport is approximately four miles from the L'Enfant Plaza Hotel.

183. On October 9, 1981, Judge Hastings' car was parked at the Miami International Airport.

184. On October 9, 1981, Judge Hastings took a taxi, at a cost of fifty dollars, to Baltimore-Washington International Airport, from the L'Enfant Plaza Hotel in Washington, D.C.

185. Baltimore-Washington International Airport is 32 miles northeast of the L'Enfant Plaza Hotel and approximately an hour's drive in Friday afternoon traffic.

186. On October 9, 1981, at 4:37 p.m., Judge Hastings called his mother from a pay telephone at Baltimore-Washington International Airport and spoke for four minutes. He placed another call to her at 4:43 p.m. and spoke for two minutes.

187. On October 9, 1981, at 5:06 p.m., Judge Hastings called Patricia Williams at her home in Lauderhill, Florida from a pay telephone at Baltimore-Washington International Airport and spoke for one minute.

188. During the 5:06 p.m. telephone call on October 9, 1981, from the Baltimore-Washington International Airport, Judge Hastings told Patricia Williams to call him back at a different pay telephone.

189. When Patricia Williams called Judge Hastings back at 5:07 p.m., on October 9, 1981, at the Baltimore-Washington International Airport, Judge Hastings told her to go outside, find a pay telephone and call him back.

190. On October 9, 1981, at 5:22 p.m., Patricia Williams called Judge Hastings at a pay telephone at the Baltimore-Washington International Airport from a pay telephone in a shopping center near her home in Lauderhill, Florida.

191. After Patricia Williams called him at the Baltimore-Washington International Airport at 5:22 p.m. on October 9, 1981, Judge Hastings took her number, moved to another pay telephone at Baltimore-Washington International Airport and, at 5:24 p.m., called Ms. Williams at her pay telephone.

192. On Friday, October 9, 1981, at 5:31 p.m. Judge Hastings made a reservation to go to Fort Lauderdale, Florida on Delta Airlines flight 237 departing at 6:30 p.m. That flight was scheduled to continue on to Miami from Fort Lauderdale.

193. There is a handwritten notation on Judge Hastings' ticket for Delta flight 237 on October 9, 1981, crossing out Fort Lauderdale as his destination and substituting Miami as the final destination.

194. On October 9, 1981, Judge Hastings disembarked at Fort Lauderdale from Delta flight 237, which was scheduled to arrive at 8:38 p.m.

195. On October 9, 1981, Judge Hastings rented a car when he arrived at the Fort Lauderdale airport.

196. Prior to being interviewed by the FBI on October 9, 1981 in Lauderhill, Florida, Judge Hastings had not contacted anyone in the FBI that day.

197. When Mildred Hastings, the mother of Judge Hastings, was interviewed by the FBI on the night of October 9, 1981, at about 11:00 or 11:30 p.m., she stated that she had not heard from her son.

198. On October 9, 1981, Mildred Hastings lived with her son, Alcee L. Hastings, at 2970 N.W. 55th Ave., Apt. 1-B, Lauderhill, Florida. Two telephone numbers were provided to that residence. Telephone number (305) 486-0733 belonged to Mildred Hastings, and telephone number (305) 731-8176 was used by Judge Hastings.

199. At about midnight on October 9, 1981, FBI Special Agents John J. Simmons, Jr. and Lawrence K. Harrigan arrived at the home of Patricia Williams in Lauderhill, Florida, seeking Judge Hastings. They discovered Judge Hastings was there and he agreed to be interviewed by them.

200. When Judge Hastings was interviewed by the FBI at Patricia Williams' home late on the night of October 9, 1981, he denied any involvement with William Borders in a bribery conspiracy. He stated that he did not believe he had ever discussed the *Romano* case with Borders.

201. On Monday, October 12, 1981, three days after Borders' arrest, at 6:38 p.m. a telephone call was made from Judge Hastings' home telephone number to William Borders' home telephone number. The call lasted 2 minutes.

202. Grand Jury 81-1 (MIA) returned indictments against William Borders and Judge Hastings on December 29, 1981.

203. Grand Jury 81-1 (MIA) indicted William Borders on four counts. The first count charged Borders with conspiring to solicit a bribe in a pending criminal case, namely, *United States* v. *Romano,* in violation of 18 U.S.C. Section 371. The second count charged Borders with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. Section 1503. This count alleged

that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, H. Paul Rico, he believed to be a defendant in the *Romano* case. Counts three and four alleged that Borders travelled in interstate commerce with the intent to carry out a bribery in violation of 18 U.S.C. Section 201.

204. Grand Jury 81-1 (MIA) indicted Alcee Hastings on two counts. The first count charged Judge Hastings with conspiring to solicit a bribe in a pending criminal case, namely, *United States* v. *Romano*, in violation of 18 U.S.C. Section 371. The second count charged Judge Hastings with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. Section 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, H. Paul Rico, he believed to be a defendant in the *Romano* case.

205. *United States* v. *Alcee Hastings*, No. 81-596-Cr. ETG (S.D. Florida) was assigned to Judge Edward T. Gignoux on January 4, 1981, sitting by designation.

206. On January 19, 1982, Judge Gignoux issued an order in *United States* v. *Alcee Hastings*, No. 81-596-Cr. ETG (S.D. Florida), requiring the defendant to produce for the government, *inter alia*, those documents he intended to introduce as evidence in chief at the trial and requiring the government to produce, *inter alia*, all written or recorded statements made by the defendant.

207. Pursuant to the January 19, 1982 discovery order in *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), the prosecution produced various documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and William Borders.

208. Pursuant to the January 19, 1982 discovery order in *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), the defense produced, on February 12, 1982, the documents it intended to introduce as evidence in chief at the trial.

209. No letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings were included in Judge Hastings' production on February 12, 1982 pursuant to the January 19, 1982 reciprocal discovery order in *United States* v. *Hastings*, No. 81-596-Cr ETG (S.D. Florida).

210. During his representation of Judge Hastings, Joel Hirschhorn, counsel for Judge Hastings from January 12, 1982 to March 3, 1982, never saw any letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings.

211. Joel Hirschhorn withdrew as counsel for Judge Hastings on March 3, 1982.

212. On February 1, 1982, Judge Hastings filed a motion in *United States* v. *Hastings*, No. 81-596-Cr ETG (S.D. Florida), to quash his indictment and dismiss the criminal proceedings against him for lack of jurisdiction on the ground that a sitting federal judge had to be impeached before a criminal prosecution could proceed.

213. On March 2, 1982, Judge Hastings' trial in *United States* v. *Hastings*, No. 81-596-Cr ETG (S.D. Florida), was stayed pending the interlocutory appeal of the motion he had filed challenging his prosecution prior to impeachment.

214. On March 8, 1982, in *United States* v. *Hastings*, No. 81-596-Cr ETG (S.D. Florida), Judge Gignoux granted William Borders' motion for change of venue of his trial, and ordered his case to be tried in Atlanta, Georgia.

215. William Borders was tried before a jury in Atlanta, Georgia from March 22, 1982 until March 29, 1982.

216. In the trial of *United States* v. *Borders*, (No. CR-82-75-A), neither William Borders nor Judge Hastings was called as a witness to testify.

217. The jury in *United States* v. *Borders*, (No. CR-82-75-A), convicted Borders on all counts on March 30, 1982.

218. Andrew Mavrides, an attorney then representing Judge Hastings, attended William Borders' trial in March 1982, as an observer, and ordered and received copies of the trial transcript.

219. On July 12, 1982, the United States Court of Appeals for the Eleventh Circuit upheld the trial court's denial of Judge Hastings' motion to quash his indictment and dismiss in *United States* v. *Hastings*.

220. In December 1982, Judge Hastings produced for the prosecution what he claimed were draft letters regarding Hemphill Pride, which he claimed to have written on October 5, 1981.

221. The letters produced by Judge Hastings in December 1982 consisted of four yellow legal pad sheets, in Judge Hastings' handwriting, comprising three letters, one addressed to Hemphill Pride, and the other two addressed to unspecified friends and supporters.

222. The following attorneys, *inter alia*, filed Notices of Appearance for Judge Hastings in *United States* v. *Hastings*, for the indicated time periods: Joel Hirschhorn (1/12/82 to 3/2/82); Andrew Mavrides (3/2/82) to 10/27/82); Patricia Williams (10/27/82 through conclusion of case).

223. The prosecution in *United States* v. *Hastings* submitted the letters produced in December 1982 by Judge Hastings to forensic experts in an attempt to date the creation of the letters. However, the paper and ink employed were such that it was not possible to conclude whether the letters were written on October 5, 1981, or at a subsequent time.

224. Tests conducted by forensic experts in 1982 and 1987 to reveal impressions other than visible writing on the letters produced in December 1982 by the defense in *United States* v. *Hastings* revealed nothing intelligible.

225. The trial in *United States* v. *Hastings*, No. 81-596-CR-ETG (S.D. Florida), was held in Miami, Florida, beginning January 19, 1983, and continuing until February 4, 1983.

226. In *United States* v. *Hastings*, No. 81-596-CR-ETG (S.D. Florida), Judge Hastings was represented by himself and Patricia Williams.

227. In *United States* v. *Hastings*, No. 81-596-Cr. ETG (S.D. Florida), William Borders was not called to testify.

228. In *United States* v. *Hastings*, No. 81-596-CR-ETG (S.D. Florida), Judge Hastings took the stand, appearing as the final witness in his defense.

229. Judge Hastings testified at his trial that he and William Borders did not agree to solicit a bribe from Thomas and Frank Romano.

230. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question. Did you agree with and conspire with William Borders to influence, in any way, the performance of your judicial duties?

Answer: No. I did not.

Question. Did you agree with Bill Borders and intend knowingly and voluntarily to participate in any kind of illegal undertaking?

Answer: None whatsoever. I did not do that, nor would I have done so, nor would I now.

231. Judge Hastings testified at his trial that he and William Borders did not agree that Judge Hastings would modify Thomas and Frank Romanos' sentences from a prison term to probation in exchange for the bribe.

232. Judge Hastings testified at his trial that he and William Borders had never agreed that Judge Hastings would set aside the May 4, 1981 forfeiture order as part of a bribery scheme.

233. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. Let me say it this way: Is not the gist of what Mr. Borders said to the man he thought was Romano was that he could eliminate their jail sentences for $125,000. As a show of proof, A, he'd produce you at any restaurant they wanted, and B, a substantial portion of property would be returned to them?

Answer: I believe that is the gist of the conversation.

Question. Of course, you had no idea that was going on?

Answer. No. I didn't.

234. The letters produced by the defense in December 1982 in *United States* v. *Hastings*, No. 81-596-CR-ETG (S.D. Florida), were never typed or sent out or shown to Judge Hastings' secretary, Betty Williams.

235. At his trial, Judge Hastings testified that William Borders telephoned and spoke to Hemphill Pride at telephone number (803) 777-7716 on July 24, 1981.

236. Specifically, Judge Hastings testified under oath at his trial as follows:

Question: Judge, I would like to direct your attention to Item No. 11. Is there a phone call dated 7/24?

Answer. The second column. Item No. 11, dated July the 24th, is a telephone call to a number in Columbia, South Carolina, being Area Code 803-777-7716, and that call was for five minutes.

Question. Do you recognize that number?

Answer. The number is a number where Hemphill Pride may have been working. I am not certain if he was working there or not, but I have called that number myself.

Question. All right. And that call was made by Bill Borders, to Hemphill Pride on July 24th?

Answer. On July 24th, correct.

237. On July 24, 1981, telephone number (803) 777-7716 belonged to Andrew Chisholm, a business contact of William Borders.

238. In 1981, Hemphill Pride had no access to telephone number (803) 777-7716, which was in Andrew Chisholm's office.

239. At his trial, Judge Hastings testified that he telephoned and spoke to Hemphill Pride at telephone number (803) 758-8825 on May 5, 1981 and September 2, 1981.

240. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. Judge, would you tell us about the first call that I indicated with a little check on the front page, there?

Answer. The first call would be Item 2 under the second full itemization column, and it is a call . . . to Columbia, South Carolina. And the call is a five-minute call, and it is placed on September 2nd, at 11 something in the morning.

Question. And to whom was that call placed?

Answer. I know for a fact that this particular call was placed to Hemphill Pride.

Question. Did you speak with Hemphill Pride?

Answer. I certainly did.

Question. On that day?

Answer. I certainly did.

Question. All right. Now, would you seek out the second call that I have indicated on those toll records with a little check?

Answer. May 5th.

Question. May 5th?

Answer. '81. I spoke with Mr. Pride.

241. Telephone number (803) 758-8825 on May 5, 1981 and September 2, 1981 belonged to Carolyn McIver, a social acquaintance of Judge Hastings.

242. In 1981, Carolyn McIver did not know Hemphill Pride.

243. At his trial, Judge Hastings testified that he telephoned and spoke with Hemphill Pride at telephone number (803) 782-9387 on August 2, 1981.

244. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. Judge, I direct your attention to the August 2nd call.

Answer. Yes.

Question. The one for eighteen minutes' duration?

Answer. Yes.

Question. Would you tell us what time that call was placed?

Answer. 9:20 in the morning, to Columbia, South Carolina, to a place that I know is the number of Hemphill Pride, and it was a eighteen-minute call.

Question. And did you, in fact, speak with Hemphill Pride for eighteen minutes on August 2nd?

Answer. Yes I did; . . .

245. On August 2, 1981, the telephone number (803) 782-9387 belonged to Patricia Williams' former mother-in-law, Eleanor Golar-Williams.

246. In 1981, Hemphill Pride had never been in Eleanor Golar-Williams' home, where telephone number (803) 782-9387 was subscribed.

247. Patricia Williams had telephoned Eleanor Golar-Williams at her home on eleven occasions between April 14, 1979 and August 2, 1981.

248. At his trial, Judge Hastings testified that he was surprised by William Borders' appearance at this Sheraton-Washington Hotel room at 10:00 p.m. on September 12, 1981.

249. Specifically, Judge Hastings testified under oath at his trial as follows:

Answer. He [Mr. Borders] knocked on the door. I answered it . . . and I said words to the effect, "Some kind of surprise," without trying to remember exactly what I said, but I was surprised to see Bill . . .

* * * * * * *

Question. And you weren't waiting for Mr. Borders?

Answer. Oh, absolutely not.

250. At his trial, Judge Hastings testified as to why, on October 5, 1981, he told his law clerk, Jeffrey Miller, to prepare the order returning a substantial amount of Thomas and Frank Romano's property.

251. Specifically, Judge Hastings testified under oath at his trial as follows:

Answer. . . . But the most pressing consideration was the complexity of the forfeiture aspect and his leaving the possibility of his not being there when I returned from the long trip with the exception of one day that I was going to come back to try a juvenile that was in jail.

And it is for that reason that I made the statement to him that I wanted the order done.

* * * * * * *

Question. What was the urgency to issuing the order on October the 6th?

Answer. Because Jeffrey was going to be leaving and I was going to be away for the month of October.

252. At his trial, Judge Hastings testified as to the meaning and purpose of his October 5, 1981 telephone conversation with William Borders.

253. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. At about 5:00 in the afternoon, you called Bill Borders on October 5th?

Answer. Yes, I——

Question. Why did you call him?

Answer. I called him, then, because on October 4th, at some time in the afternoon, evidently he left a message for me with my mother . . . something about Hemphill.

And again it had to do with matters that he and I had been in rather ongoing discussions about . . . trying to raise money for him.

* * * * * * *

Question. Now when you used the word "letters," were you in fact referring to letters?

Answer. I certainly was.

* * * * * * *

Question. Mr. Borders goes "Ah-hah" and then what do you say?

Answer. I say "And everything's okay. The only thing I was concerned about was, did you hear if, ah, hear from him after we talked?

Question. And what are you talking about there?

Answer. I am referring specifically to the call that I received from Mr. Borders either on September 20th or 21st wherein he indicated to me he expected to see Hemphill again, and he was asking him specifically about his exact financial condition.

* * * * * * *

Question. And Mr. Borders, "See I talked to him and he wrote some things down for me." What did you take Mr. Borders to mean there?

Answer. The best I can think I took that he meant had to do with Hemphill's financial condition.

* * * * * * *

Question. Just so I am perfectly clear on your answer, you thought he was going to get some more information about Mr. Pride?

Answer. That is all I could have possibly had in my mind at that time, sir.

* * * * * * *

Question. Now, are these the letters to which you refer in your October 5th conversation?

Answer. Certainly.

* * * * * * *

Question. Judge Hastings, you said you wrote these letters on the Bench. On what date did you write these letters?

Answer. October 5th.

* * * * * * *

Question. All right. So we are 100 percent clear on this, you wrote these letters, Government or Defense Exhibit 29, from the Bench during the Santorelli trial on October 5?

Answer. 100 percent clear.

254. Fort Pierce is approximately 60 miles north of West Palm Beach, Florida.

255. Fort Pierce is approximately 60 miles south of Melbourne, Florida.

256. Fort Pierce is approximately 115 miles from Orlando, Florida.

257. On September 12, 1981, while in the Sheraton-Washington Hotel room of Judge Hastings, with Judge Hastings and others, Pearl Dabreau understood that they were waiting for someone before they went to dinner.

258. On September 13, 1981, while in the Sheraton-Washington Hotel room of Judge Hastings, with Judge Hastings and others, Donna Mendez understood that they were waiting for William Borders.

259. At his trial, Judge Hastings testified that he expected to meet William Borders at the Fontainebleau Hotel on September 16, 1981.

260. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. Judge, would you tell the jury why you went to the Fontainebleau Hotel on September 16th?

Answer. As I indicated, William Borders had indicated to me that he would be at the Fontainebleau Hotel during the dinner hour and for purely social purposes he and I were going to meet expressly for the purpose of socializing . . . I know for a fact that . . . William Borders indicated to me that he would be in Miami at the Fontainebleau Hotel September 16th.

And that is the primary reason I went there.

* * * * * * *

Question. Judge, did you dine at the Fontainebleau Hotel on September 16, 1981, to show your participation in a bribery scheme?

Answer. Absolutely not.

261. At his trial, Judge Hastings testified that on the afternoon of October 9, 1981, he called his mother and Patricia Williams in Florida from the L'Enfant Plaza Hotel in Washington, D.C.

262. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. . . . What did you do when you got down to your room?

Answer. The very first thing I did, walked straight into the room and picked up the telephone and called my mother.

Question. And when you called your mother, what did you learn?

Answer. When I called my mother, she was—I do not wish to exaggerate—I have never known her to be as hysterical as she was. It was just that simple. And I couldn't calm her down . . .

Question. Did you make any other calls?

Answer. Yes, I did.

Question. Had Hemphill arrived at your room by this time?

Answer. No he had not.

Question. Who did you call?

Answer. I called you [Patricia Williams].

Question. All right. And what happened there?

Answer. I called you at your office at the Economic Opportunities Commission here at the Dupont Plaza Hotel and I learned you had been interviewed by the FBI and the particulars, at least in part, as to what had transpired in your interview with the FBI.

And in addition to that I learned that you had called my office and had learned that the FBI was there for the express purpose, among other things, of interviewing my staff.

* * * * * * *

Question. You are certain that sitting in the hotel room after Mr. Pride gave you the news, that you made two long distance calls to Florida and you charged them to your room?

Answer. Right . . .

263. Patricia Williams wrote and sent a letter dated October 14, 1981, to Judge Hastings that stated as follows:

2401 N.W. 43RD TERRACE,
LAUDERHILL, FLORIDA 33313,
October 14, 1981.

Hon. ALCEE L. HASTINGS,
U.S. District Judge, 2970 N.W. 55th Avenue, Apartment 1-B, Fort Lauderdale, Florida 33313.

DEAR JUDGE: I want you to know that I felt pride and joy as well as horror as a result of our telephone conversation on Friday, October 9th, when you called me from Baltimore and indicated that you required my legal assistance in confronting allegations of bribery which you had just learned were being directed towards you. I am especially pleased to know that you have since invited the legal expertise of Jesse McCrary and Delano Stewart. I feel certain that the best legal treatment conceivable will be administered to your case by this team.

Yours truly,

PATRICIA GRAHAM WILLIAMS.

cc. Jesse McCrary; Delano Stewart.

264. At his trial, Judge Hastings testified as to why, on October 9, 1981, he took a plane from Baltimore-Washington International Airport rather than Washington National Airport.

265. Specifically, Judge Hastings testified under oath at his trial as follows:

Question. Why did you not go to the airport, the nearer airport?

Answer. There was never any question in my mind but that at that time in the evening I thought that all flights that left Washington, D.C. at that particular point in time, either went through Atlanta en route to Miami, but I was absolutely certain that there was none until 10:00 p.m.

Question. Did you consider that there might be FBI agents looking for you at the National Airport?

Answer. It was of no concern to me had there been FBI agents at the National Airport, Dallas [Dulles] or at the Baltimore Airport . . . I had no desire or design to not cooperate with any authorities.

* * * * * * *

Question. And your thinking was there would be no flights from National Airport that would fly you non-stop from Washington National Airport——

Answer. That was my thinking.

Question [continuing]. To Miami? Even though two months ago you had taken one?

Answer. Yes, sir. That was my thinking at that particular time. I have traveled that way an awful lot, an awful lot.

266. Before departing the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings did not check on airline flight schedules to Miami or Fort Lauderdale, nor on seat availability on flights to those cities from either Washington National Airport or Baltimore-Washington International Airport.

267. On July 20, 1981, Judge Hastings had a reservation on Eastern Airlines flight 197 departing Washington National Airport at 5:30 p.m. for Miami, Florida.

268. On October 9, 1981, there were seats available on an Eastern direct flight to Miami from Washington National Airport, departing at 4:30 p.m. and arriving in Miami at 6:45 p.m.

269. On Febraury 20, 1981, at 7:30 a.m., Judge Hastings called William Borders. The call lasted three minutes.

270. On Febraury 20, 1981, the final evidentiary hearing on the forfeiture issue in the *Romano* case was held.

271. On April 8, 1981, the last of the initial set of memoranda relating to the forfeiture issue in the *Romano* case were filed.

272. On April 9, 1981, at approximately 10:40 a.m., Judge Hastings called William Borders' office. He left a message for William Borders to call and said he would be "at his office between 12 and 1."

273. On April 9, 1981, at 12:15 p.m., a call was placed from a pay telephone in the corridor of the third floor of the federal courthouse in Miami, Florida near Judge Hastings' chambers to a pay telephone in the lobby of the federal courthouse in Washington, D.C. The call lasted one minute or less and was charged to Judge Hastings' residence.

274. The call placed from a pay telephone in the corridor of the third floor of the federal courthouse in Miami, Florida to a pay telephone in the lobby of the federal courthouse in Washington, D.C., on April 9, 1981, at 12:15 p.m., was a call from Judge Hastings to William Borders.

275. On April 9, 1981, at approximately 12:15 p.m., William Borders' secretary made a reservation for Mr. Borders to fly to Miami the following weekend.

276. On April 23, 1981, the parties *Romano* were advised that the sentencing in the case was scheduled for May 11, 1981.

277. Judge Hastings called William Borders on April 30, 1981 (no time recorded), leaving a message saying, "at home at 6:30 only time he will be at home."

278. Judge Hastings called William Borders on May 1, 1981 and left no message.

279. Judge Hastings called William Borders on May 4, 1981, between 10:20 and 10:40 a.m., leaving an "urgent" message, "Will await call between 12 and 1 from you."

280. Judge Hastings called William Borders on May 6, 1981, at the home of Madeline Petty after midnight, from Madison, New Jersey.

281. In 1981, Judge Hastings was not a social acquaintance of Madeline Petty and, in fact, he did not meet her until his trial in 1983.

282. Judge Hastings called William Borders on May 7, 1981, at 4:30 p.m. and left a message for Borders to call him at 7:00 a.m. the next morning.

283. Judge Hastings called William Borders twice on May 11, 1981 before 7:00 a.m. at the home of Madeline Petty.

284. Judge Hastings called William Borders on July 5, 1981, at 8:35 p.m. The call lasted less than one minute.

285. Judge Hastings called William Borders on July 7, 1981, at 11:56 a.m. The call lasted less than one minute.

286. Judge Hastings called William Borders on July 9, 1981, at 11:50 a.m., and left a message saying, "Sat. morning Air Florida #91 at 10:45 from Key West. Will be departing at 1:00."

287. On July 11, 1981, William Borders met Judge Hastings in Fort Lauderdale, Florida, and the two of them drove to the home of Jessie McCrary where they spent the afternoon.

288. On September 20 or 21, 1981, William Borders and Judge Hastings spoke on the telephone.

289. Local 1922, located in Miami, Florida, is a chapter of the International Longshoremen's Association.

290. WAXY are the call letters of a radio station in Miami, Florida.

291. In 1986, Stephen Clark had been Mayor of Dade County, Florida for a total of 14 years, from 1970 to 1972, and from 1974 to 1986.

292. Peter Ferguson was Mayor Clark's campaign manager in 1985 and 1986, among other years. At that time he was also Marketing Director for Fiscal Operations of the Port of Miami.

293. Kevin "Waxy" Gordon was the zoning code enforcer for the city of Surfside, Florida in 1985 and early 1986, among other years. Sometime prior to 1985, Gordon had retired from his position as a code enforcement officer for the city of Miami, Florida.

294. In 1986, Mayor Clark had known Kevin "Waxy" Gordon since the late 1960s.

295. In 1986, Peter Ferguson had known Kevin "Waxy" Gordon for approximately 15 years.

296. In furtherance of an investigation into corrupt union practices at the Port of Miami, on or about July 15, 1985, the U.S. Attorney's Office in Miami, Florida applied to the U.S. District Court for the Southern District of Florida for a wiretap pursuant to 18 U.S.C. 2516.

297. In July 1985, Judge Alcee L. Hastings was the judge of the U.S. District Court for the Southern District of Florida assigned the responsibility of reviewing applications submitted pursuant to 18 U.S.C. 2516.

298. On July 15, 1985, Assistant U.S. Attorneys Roberto Martinez and Mark Schnapp and FBI Case Agent Geoffrey Santini met with Judge Hastings with respect to the application for the wiretap. A few days earlier, Assistant U.S. Attorney Martinez had submitted to Judge Hastings the affidavit accompanying the application for the wiretap.

299. The July 15, 1985 application for the wiretap and the accompanying affidavit stated that a wiretap was necessary because other investigative techniques had failed due to the suspicious and potentially violent nature of the subjects of the FBI investigation.

300. In the July 15, 1985, application and accompanying affidavit, the subjects of the proposed wiretap were identified as: the son of a leading organized crime figure in Cleveland, Ohio who was the Local 1922 member controlling bookmaking, usury and fencing operations at the Port of Miami; the secretary-treasurer of Local 1922 who was the son of the former office manager of Local 1922 (who, in turn, had been convicted of racketerring, racketerring conspiracy, extortion and Taft-Hartley Act violations); a self-described member of La Costa Nostra; and Kevin "Waxy" Gordon, a zoning code enforcer for the City of Surfside, Florida, who asserted that through political connections he could exercise control over Local 1922 officials.

301. 18 U.S.C. 2517(5) requires judicial approval of the investigation of criminal activity discovered as a result of the wiretap if that criminal activity was not included in the original application for the wiretap.

302. The U.S. Attorney's Office presented Judge Hastings with weekly progress reports, dated July 22 and 29, and August 5 and 12, 1985, describing the information obtained from the wiretap authorized on July 15, 1985 and information obtained from other investigative techniques.

303. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the First Progress Report on July 22, 1985, at which time Judge Hastings reviewed and signed the report and entered an order placing under seal all the information contained in the report.

304. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the Second Progress Report on July 29, 1985, at which time Judge Hastings reviewed and signed the report and entered an order placing under seal all the information contained in the report.

305. The Second Progress Report, dated July 29, 1985, contains a description of criminal activity that involved the obtaining of illegal zoning changes and licenses for an amusement operation—a project that Johnny Rivero, a confidential source of the FBI, had discussed with Kevin "Waxy" Gordon.

306. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the Third Progress Report on August 5, 1985, at which time Judge Hastings signed the report and entered an order placing under seal all the information contained in the report.

307. The First, Second and Third Progress Reports, dated July 22, 29 and August 5, 1985 respectively, contain references by the subjects of the wiretap, including Kevin "Waxy" Gordon, illustrating that they did not trust the telephones and were suspicious that certain persons were law enforcement Special Agents and cars spotted near their homes belonged to Special Agents.

308. Assistant U.S. Attorney Jon A. May met with Judge Hastings with respect to the Fourth Progress Report on August 12, 1985.

309. The Fourth Progress Report, dated August 12, 1985, sets forth a conversation in which Kevin "Waxy" Gordon told Johnny Rivero that he had Mayor Stephen Clark of Dade County, Florida "in his pocket," that Gordon had raised over $40,000 for Mayor Clark during his last election campaign, and that Gordon's buddy was the mayor's campaign manager.

310. Judge Hastings signed the Fourth Progress Report on August 13, 1985 and at that time entered an order placing under seal all the information contained in the report.

311. Assistant U.S. Attorney Jon A. May and FBI Case Agent Geoffrey Santini met with Judge Hastings with respect to the Fifth Progress report on August 15, 1985, at which time Judge Hastings signed the report and entered an order placing under seal all the information contained in the report.

312. The July 15, 1985 wiretap had been authorized by Judge Hastings for 30 days. On August 15, 1985, in a handwritten statement on the last page of the Fifth Progress Report, Judge Hastings authorized a one day extension of the July 15, 1985 wiretap.

313. The Third, Fourth and Fifth Progress Reports, dated August 5, 12 and 15, 1985 respectively, include information that Kevin "Waxy" Gordon was working through several sources to get Johnny Rivero into Local 1922.

314. The Third, Fourth and Fifth Progress Reports, dated August 5, 12, and 15, 1985 respectively, state that Kevin "Waxy" Gordon was also attempting to find an appropriate location for the amusement operation proposed by Johnny Rivero.

315. On August 15, 1985, Assistant U.S. Attorney Jon A. May and FBI Case Agent Santini met with Judge Hastings with respect to an application for a 30 day extension of the wiretap and a supporting affidavit.

316. The August 15, 1985 affidavit in support of the application for an extension of the wiretap repeated almost verbatim the events reported in the First, Second, Third and Fourth Progress Reports, including all the statements about Mayor Clark.

317. On August 15, 1985, Judge Hastings signed the application for a 30 day extension of the wiretap and entered all the necessary orders, including an order placing under seal all the information contained in the documents that had been presented to him by Assistant U.S. Attorney Jon A. May and FBI Case Agent Geoffrey Santini on August 15, 1985.

318. On August 21, 1985, Johnny Rivero introduced Kevin "Waxy" Gordon to "Gino", an undercover FBI Special Agent posing as a Houston-based entrepreneur who wanted to set up the amusement operation. Gino was being impersonated by FBI Special Agent Richard J. Giannotti.

319. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report after the extension of the wiretap on August 22, 1985.

320. The First Progress Report after the extension of the wiretap, dated August 22, 1985, reports a conversation, which took place on August 21, 1985, in which Kevin "Waxy" Gordon stated, when Gino expressed interest in the Hialeah area as a possible location for the amusement operation, that help from a friend of Mayor Clark who is in Hialeah might cost as much as $10,000.

321. Judge Hastings signed the First Progress Report after the extension of the wiretap on August 22, 1985 and at that time entered an order placing under seal all the information contained in the report.

322. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap on August 29, 1985.

323. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, describes a meeting at the Miami Outboard Club, on August 22, 1985, during which Kevin "Waxy" Gordon introduced Johnny Rivero to Mayor Clark, Peter Ferguson and several other people.

324. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, states that on August 22, 1985 Mayor Clark walked into the Miami Out-

board Club, went over to Kevin "Waxy" Gordon, and hugged him, at which time Gordon introduced Johnny Rivero to "Steve Clark, the mayor."

325. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, states that on August 22, 1985, at the Miami Outboard Club, after some general conversation and a game of pool, Kevin "Waxy" Gordon told Johnny Rivero that "Steve is going to take care of this Hialeah thing for us, since that's where Gino wants to be."

326. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, describes that on August 22, 1985, at the Miami Outboard Club, Mayor Clark stated, "If you have any problems with that thing in Hialeah get in touch with me." Kevin "Waxy" Gordon then asked again for the name of the contact in Hialeah, and Mayor Clark gave him the name of a Hialeah councilman and added, "If you have any problems with him, get back in touch with me."

327. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap on August 29, 1985 in the courtroom. Judge Hastings reviewed the report while on the bench and then asked Martinez to see him in the chambers.

328. Judge Hastings signed the Second Progress Report after the extension of the wiretap on August 29, 1985, and at that time entered an order placing under seal all the information contained in the report.

329. On September 5, 1985, Assistant U.S. Attorney Roberto Martinez presented the Third Progress Report after the extension of the wiretap to Judge Hastings in the courtoom. Judge Hastings read the report while on the bench and then called Martinez to the bench.

330. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, quotes Kevin "Waxy" Gordon as saying, in a conversation recorded by the FBI, that the zoning matters in Hialeah will be handled by Mayor Clark's contact.

331. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, states that Kevin "Waxy" Gordon told Gino, in a conversation recorded by the FBI, that Gordon had made a connection with the Hialeah Zoning Commission through Mayor Clark.

332. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, states that Kevin "Waxy" Gordon reported to Johnny Rivero, in a conversation recorded by the FBI, that he had told Gino all about Hialeah and the mayor.

333. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, states that when Kevin "Waxy" Gordon, Johnny Rivero and Gino met to look at potential sites for the amusement operation, Gordon described a Hialeah councilman as "Steve Clark's man in Hialeah."

334. Judge Hastings signed the Third Progress Report after the extension of the wiretap on September 5, 1985 and at that time entered an order placing under seal all the information contained in the report.

335. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, contains references by the subjects of the wiretap that they had specific concerns about Johnny Rivero.

336. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, describes that when Kevin "Waxy" Gordon made contact with a union official to get Johnny Rivero into Local 1922, he was told that the official had contacted someone in the local chapter of the International Longshoremen's Association in New Orleans and had learned that the New Orleans union official had not heard of Rivero.

337. The Second Progress Report after the extension of the wiretap, dated August 29, 1985, states that as a result of the conversation with the New Orleans local, officials of Local 1922 became very suspicious of Johnny Rivero.

338. The Fourth Progress Report, dated August 12, 1985, states that after Kevin "Waxy" Gordon introduced Johnny Rivero to one of the Local 1922 officials, the union official called back and said he needed a "resume" on Rivero, "where he comes from and who he knows." The Union official stated that before they talk to anybody "they got to know for damn sure who they are talking about."

339. The First Progress Report after the extension of the wiretap, dated August 22, 1985, states that after Johnny Rivero provided the requested information, the union official stated that there were no positions available.

340. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, states that the day after Kevin "Waxy" Gordon met with Gino and Johnny Rivero to look at possible locations for the amusement operation, Gordon called Rivero and told him that Gino had better go back to Houston. Gordon ex-

plained to Rivero that the Hialeah councilman would be out of town for a week and that he did not know how the councilman would feel about giving someone he does not know "guarantees about zoning matters, it usually isn't done that way . . . It's an illegal act, you know."

341. The First and Second Progress Reports after the extension of the wiretap, dated August 22 and August 29, 1985 respectively, explain that Kevin "Waxy" Gordon and another target of the FBI investigation had talked to Johnny Rivero about enlisting the aid of corrupt officers in the North Bay Village, Florida police department to bring in a shipment of cocaine.

342. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, explains that Johnny Rivero had introduced one of the targets of the FBI investigation to an undercover Special Agent posing as a cocaine smuggler interested in obtaining police protection from the North Bay Village, Florida police department.

343. The Third Progress Report after the extension of the wiretap, dated September 5, 1985, explains that Johnny Rivero had met with one of the targets of the FBI investigation and the undercover Special Agent who was posing as a cocaine smuggler in order to set the final terms for the cocaine shipment ($3,000 to each participant). Thereafter, the target of the FBI investigation introduced Rivero to one of the North Bay Village, Florida police officers.

344. The Second and Third Progress Reports after the extension of the wiretap, dated August 29 and September 5, 1985 respectively, explain that Kevin "Waxy" Gordon had introduced Johnny Rivero to a boat captain who was available to bring in the cocaine.

345. The Third Progress Report, dated August 5, 1985, and the Second and Third Progress Reports after the extension of the wiretap, dated August 29 and September 5, 1985 respectively, explain that one of the targets of the FBI investigation had threatened to "blow away" a drug dealer who was later found dead on the beach, and the person who made that threat was staying at the apartment of the confidential source, Johnny Rivero.

346. Judge Hastings' sole source of the information about the actions and statements of Kevin "Waxy" Gordon and Gordon's relationship with Mayor Clark were the applications, affidavits and progress reports relating to the wiretap initially authorized by Judge Hastings on July 15, 1985 and which he extended on August 15, 1985.

347. In 1985, the Metropolitan Miami Action Plan ["MMAP"] was a community service organization promoting black-white relations in the Miami, Florida area.

348. On September 6 and 7, 1985, MMAP held its Third Annual Conference at the Hyatt Regency Hotel in Miami, Florida.

349. On September 6, 1985, Stephen Clark, Mayor of Dade County, Florida, attended the breakfast meeting of the MMAP Third Annual Conference.

350. On September 6, 1985, Judge Hastings was the guest speaker at the breakfast meeting of the MMAP Third Annual Conference.

351. On September 6, 1985, the breakfast meeting of the MMAP Third annual Conference was held in the Regency Ballroom on the Terrace Level of the Hyatt Regency Hotel.

352. According to the MMAP Third Annual Conference program, the breakfast meeting on September 6, 1985 was scheduled to begin at 8:30 a.m.

353. According to the MMAP Third Annual Conference program, registration for the conference began at 7:30 a.m. on the Terrace Level of the Hyatt Regency Hotel.

354. During registration for its Third Annual Conference, MMAP served a continental breakfast in the Promenade area on the Terrace Level of the Hyatt Regency Hotel.

355. In 1985, Monsignor Bryan Walsh was the President of Catholic Community Services and Catholic Health and Rehabilitation Services in Miami, Florida.

356. On September 6, 1985, Monsignor Walsh attended the breakfast meeting of the MMAP Third Annual Conference.

357. On September 6, 1985, at approximately 8:15 a.m., Monsignor Walsh arrived at the Hyatt Regency Hotel to attend the breakfast meeting of the MMAP Third Annual Conference.

358. On September 6, 1985, between approximately 8:15 and 8:30 a.m. and prior to the beginning of the breakfast meeting of the MMAP Third Annual Conference, Monsignor Walsh, Judge Hastings and Mayor Clark spoke briefly together on the Terrace Level of the Hyatt Regency Hotel.

359. On September 6, 1985, Mayor Clark called Peter Ferguson and asked him to get in touch with Kevin "Waxy" Gordon and to tell Gordon to meet the mayor at the Miami Outboard Club at 11:30 that day.

360. At 8:58 a.m. on September 6, 1985, the FBI recorded an incoming telephone call to Kevin "Waxy" Gordon from Peter Ferguson in which Ferguson said that Mayor Clark wanted to meet Gordon at "11:30 a.m. today at the Miami Outboard."

361. On September 6, 1985, in telephone calls recorded by the FBI, Kevin "Waxy" Gordon told Johnny Rivero and another individual that he would be meeting Mayor Clark that day.

362. On September 6, 1985, Mayor Clark and Kevin "Waxy" Gordon met at the Miami Outboard Club.

363. On September 6, 1985, at the Miami Outboard Club, Mayor Clark told Kevin "Waxy" Gordon that he had learned from an authoritative source that Gordon was using his name in Hialeah.

364. On September 6, 1985, at the Miami Outboard Club, Kevin "Waxy" Gordon denied that he was using Mayor Clark's name and denied he was doing anything wrong.

365. On September 6, 1985, at the Miami Outboard Club, Kevin "Waxy" Gordon pressed Mayor Clark to identify his source, and the mayor eventually stated that his source was Judge Hastings.

366. In a telephone conversation recorded by the FBI on September 9, 1985, Kevin "Waxy" Gordon told an individual about his meeting with Mayor Clark at the Miami Outboard Club on September 6, 1985, stating that "Steve called me over there to tell me that he heard from Alcee Hastings . . . you know a Federal Judge . . . There's some rumor that I was involved with . . . ah . . . Clark, Ferguson and a councilman from Hialeah on some deal . . ."

367. By September 6, 1985, the FBI was investigating union corruption at the Port of Miami, focusing on Local 1922 admission practices. This investigation focused on getting Johnny Rivero admitted into the union.

368. By September 6, 1985, the FBI was investigating zoning practices in the city of Hialeah, Florida. This investigation involved the undercover operation in which Gino was posing as a Houston-based entrepreneur interested in setting up an amusement operation in the Hialeah area.

369. By September 6, 1985, the FBI was investigating cocaine smuggling in south Florida, focusing on the participation of North Bay Village police officers who offered protection to the drug traffickers.

370. After September 9, 1985, Kevin "Waxy" Gordon immediately suspected that Gino was an informant or law enforcement Special Agent.

371. After September 9, 1985, Kevin "Waxy" Gordon began to investigate Gino by checking the physical location of Gino's office, by attempting to contact an individual in the telephone company in order to determine whether telephone calls made to Gino's office were being forwarded to another location, and by asking a friend, who was a banking official, to check Gino's credit references.

372. On November 20, 1985, Kevin "Waxy" Gordon executed a plea agreement in which he agreed to cooperate with the FBI and U.S. Department of Justice.

373. On December 18, 1985, at the Miami Outboard Club, Kevin "Waxy" Gordon recorded a conversation he had with Peter Ferguson in which Ferguson suggested that Johnny Rivero was an undercover narcotics Special Agent.

374. On February 17, 1986, Kevin "Waxy" Gordon died after suffering a heart attack.

375. On March 6, 1986, Mayor Clark took a polygraph test administered by the FBI. Mayor Clark was asked "Are you lying when you say Judge Hastings told you to 'Stay away from Kevin Gordon?'" Mayor Clark responded "No." This answer was determined to be truthful.

376. In March 1986, Mayor Clark and Special Agent Christopher Mazzella testified before a grand jury regarding the disclosure of confidential wiretap information.

377. On May 20, 1986, Eric Holder of the Public Integrity Section of the U.S. Department of Justice called Judge Hastings in order to interview him.

378. On May 20, 1986, in the telephone call with Eric Holder, Judge Hastings declined to be interviewed and stated that Holder would have to do whatever he planned to do without Judge Hastings' assistance and that he knew how the U.S. Department of Justice worked. Judge Hastings also asked Holder if he knew who Judge Hastings was.

Respectfully submitted,

THE U.S. HOUSE OF REPRESENTATIVES,
By ALAN I. BARON.

Managers of the House of Representatives:
Peter W. Rodino, Jr., John Conyers, Jr., Don Edwards, John Bryant, Hamilton Fish, Jr., George W. Gekas.

Impeachment Trial Staff:

Alan I. Baron, Special Counsel; Janice E. Cooper, Assistant Special Counsel; Patricia Wynn, Assistant Special Counsel; Lori E. Fields, Assistant Special Counsel.

House Judiciary Committee Staff participating in impeachment trial preparation: M. Elaine Mielke, General Counsel; Alan F. Coffey, Jr., Associate Counsel; Peter Levinson, Counsel.

EXHIBIT 3

The House managers have proposed stipulations that would have precisely that effect.[10] Moreover, many of those stipulations relate to testimony and documents gathered at proceedings other than the 1983 trial. Many are based upon testimonial assertions and documents whose foundation have never been tested by cross-examination. From the judge's standpoint, all are proposed by an adversary who has long had access to relevant materials that has been denied him. So long as those conditions continue, we cannot responsibly consider, recommend, or accept stipulations on the judge's behalf.

Against that background, we believe that it is unlikely that the parties will agree upon stipulations that can be published *prior* to trial. If the Senate is to impeach the jury's verdict acquitting the judge, it will only be after it has conducted a trial at which the testimony and evidence the managers now claim support the House's allegations have been presented through live witnesses who have been cross-examined in open court. Moreover, the extent of any agreement on stipulations that may be used and published *at* trial must necessarily depend upon the extent to which Judge Hastings and his counsel are satisfied that they have had fair access to all materials that may contain relevant information. The stakes are too high to suggest that Judge Hastings partake in a game where he does not have access to the full deck that is now in the control of his opponent. Unless and until that condition is satisfied, we could not responsibly review, recommend, or accept stipulations that might limit the judge's right to insist that the House carry its burden or to confront fully the evidence offered against him.

We have no desire needlessly to consume the time of the judge, the managers, or the Senate. We are prepared to work with the managers to achieve stipulations for use at trial that will enable both sides to prepare and the Senate to conduct a trial that is as expeditious as the demands of fairness will permit. We are not prepared to consider or recommend any stipulation that might later adversely affect any of the judge's rights during the trial, including his right to insist that the House meet the burden the Constitution imposes upon it. Until we are satisfied that we have examined *all* the available evidence and had an adequate opportunity to conduct such tests as may be necessary to eliminate any reservations, we must view all proposed stipulations as suspect, and we will lack the access necessary to resolve our suspicions.

EXHIBIT 4

[In the Senate of the United States Sitting for the Trial of an Impeachment]

THE HOUSE OF REPRESENTATIVES, OF THE UNITED STATES, PLAINTIFF, *v.* THE HONORABLE ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, RESPONDENT

To: The Managers of the House of Representatives,
House of Representatives,
Washington, DC.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE MATERIAL

United States District Judge Alcee L. Hastings requests that, promptly after the 101st Congress of the United States has convened and the members of the United States House of Representatives (the "House") have qualified, taken office, and appointed managers to prosecute this impeachment on behalf of the House, the House deliver to his counsel copies of the documents and other tangible materials which are described below and which are in the possession or subject to the control of the

---

[10] Copies were also submitted to the committee's chief counsel as well as to Senate Legal Counsel.

House or its managers or staff. In addition, Judge Hastings requests that the House make all originals of such documents and other materials as are in its possession and control available to his counsel for inspection and, if necessary, testing.

I. *Documents and Other Materials Obtained or Prepared as a Result of Proceedings Conducted Against Judge Hastings Pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (the "Act").* Judge Hastings requests that copies of the following documents and other materials be delivered and that originals be made available pursuant to this request, excepting only copies of documents delivered prior to or during the Subcommittee hearings:

A. All documents and other materials transmitted by the Judicial Conference of the United States (the "Conference") to the House, the Speaker of the House, the House Committee on the Judiciary (the "Committee"), or the Committee's Subcommittee on Criminal Justice (the "Subcommittee"), or the regular or special staff of any of the foregoing, pursuant to the Conference's Certificate to the Speaker dated March 17, 1987.

B. All additional documents and other materials received by the House, the Speaker, the Committee, the Subcommittee, or regular or special staff from, at the direction, or on the authority of the Conference, the Judicial Council of the Eleventh Circuit (the "Council"), a special committee appointed by then Chief Judge John C. Godbold in March 1983 (the "Investigating Committee") or its chairman or any of its members, or John Doar, chief counsel to the Investigating Committee, or his associate counsel or staff concerning Judge Hastings or matters alleged in the Articles of Impeachment or in the Answer to Articles of Impeachment. This request specifically includes, but is not limited to, the files and materials transmitted pursuant to two Resolutions of the Judicial Council of the Eleventh Circuit Concerning the Judge Alcee L. Hastings Matter, dated September 25, 1987, and October 9, 1987, respectively, including those files, documents and other materials described in the exhibit appended to each of those resolutions. A copy of each of those resolutions and its appended exhibit is appended to this request marked "Addendum A to Request" and "Addendum B to Request", respectively.

C. All other documents and other materials concerning Judge Hastings or matters alleged in the Articles of Impeachment or in the Answer to Articles of Impeachment transmitted by or obtained from the Conference, the Council, Chief Judge Paul Roney, a special committee appointed to investigate a complaint by William F. Weld (the "Special Committee"), or the Special Committee's counsel, Sidney O. Smith and Bernard Taylor, excepting only those documents and other materials included in a volume entitled *Record of Proceedings Before a Special Committee for the Judicial Council of the Eleventh Circuit: In the Matter of a Complaint Filed by William F. Weld* submitted by Judge Hastings, with the concurrence of Chief Judge Roney, at the Subcommittee's hearings.

II. *Documents and Other Materials Evidencing Statements Made By Persons Who Have Testified or Could Testify Concerning Matters Alleged in the Articles of Impeachment or in the Answer to Articles of Impeachment.* Judge Hastings further requests that copies of the following documents and other material be delivered and that originals be made available pursuant to this request, excepting only copies of documents or materials produced pursuant to section I of this request or delivered prior to or during the Subcommittee's hearings: All documents (including interview or other notes, rough drafts, memoranda, and transcripts) and other materials (including electronic recordings) that report, comment upon, or otherwise evidence statements made by persons who have testified or who have been interviewed or otherwise identified as having information concerning Judge Hastings or matters alleged in the Articles of Impeachment or in the Answer to Articles of Impeachment. This request specifically includes, without limitation, documents and other materials that report, comment upon, or otherwise evidence statements made by persons identified on the Composite List of Witnesses in *United States* v. *Borders, United States* v. *Hastings,* Investigating Committee Hearings, Special Committee Hearings, Subcommittee Hearings (Addendum C), the Revised Provisional Witness List submitted to the Subcommittee by Judge Hastings (Addendum D), and the List Other Persons Mentioned as Having Pertinent Information (Addendum E) appended to this request as well as by other persons interviewed or contacted who have never testified or been called to testify in any proceedings. This request includes rough notes, interview notes, recordings, memoranda, transcriptions of any of the foregoing, and signed or transcribed statements prepared or taken by: agents of the Federal Bureau of Investigation (the "FBI"); prosecutors or other persons employed by the United States Department of Justice; the chairman or other members of the Investigating Committee or of the Special Committee; John Doar, Stewart, Webb, Marta Campos, or others acting under Mr. Doar's supervision or at his direction; Sidney O.

Smith, Bernard Taylor, or others acting under Mr. Smith's supervision or at his direction; Special

III. *Documents and Other Materials Gathered by or Submitted to Grand Juries in Connection with Inquiries Concerning Judge Hastings or His Conduct.* Judge Hastings further requests that copies of the following documents and other materials be delivered and that originals be made available pursuant to this request, excepting only copies of documents or other materials produced pursuant to sections I or II of this request or delivered prior to or during the Subcommittee's hearings: Transcripts of statements made or testimony given by any of the persons identified on Addenda A through E or otherwise presented to Grand Jury 81-1 (Miami), Grand Jury 86-3 (Miami), or any other grand jury concerning Judge Hastings or his conduct or any other matter related to the allegations made in the Articles of Impeachment or the Answer to Articles of Impeachment; any documents or other materials presented to any such grand jury concerning any of those matters, and transcripts of colloquies and other proceedings concerning Judge Hastings or such matters before any such grand jury. This request specifically includes, without limitation, transcripts of statements, testimony, colloquies, and other proceedings before and documents and materials presented to Grand Jury 81-1 (Miami) or any successor grand jury between December 29, 1981, and February 4, 1983, or to Grand Jury 86-3 (Miami) or any successor grand jury between September 6, 1985, and the present.

IV. *Documents and Other Materials Obtained from the United States Department of Justice or Other Executive Branch Sources.* Judge Hastings further requests that copies of the following documents and other materials be delivered and that the originals be made available pursuant to this request, excepting only copies of documents or materials produced pursuant to sections I, II, or III of this request or delivered prior to or during the Subcommittee's hearings:

A. All documents and other materials concerning Judge Hastings or the matters alleged in the Articles of Impeachment or in the Answer to Articles of Impeachment obtained from or constituting records of the United States Department of Justice and its agencies, divisions, sections, offices, and its present or former officers, agents, and employees. This request includes, but is not limited to, surveillance logs and any transcriptions thereof, internal and external memoranda authorizing or concerning any investigations or any decisions to prosecute or not to prosecute conducted or made since January 1980 concerning Judge Hastings or William Borders and including the investigations initiated in 1985 concerning Judge Hastings and the alleged disclosure of confidential information to Mayor Stephen Clark and any other investigations or materials concerning Judge Hastings conducted, prepared, or received from January 1980 through the present. This request further includes, but is not limited to, documents and materials compiled, submitted, or maintained by the Attorney General, any Deputy, Associate, or Assistant Attorney General, or by any subordinate officer or employee of the Department of Justice, including those in the Criminal Division and its Public Integrity Section; the Organized Crime Strike Forces in Miami, Florida, and Atlanta, Georgia; the United States Attorney's offices for the Southern District of Florida and the District of Maryland; and the FBI and its field offices in Miami, Florida, Washington, D.C., and Columbia, S.C.

B. To the extent not produced pursuant to Section IV.A. above, all investigative, intelligence, or other files maintained on each of the following persons: Judge Hastings, William A. Borders, Mayor Stephen P. Clark, William Dredge, Peter Ferguson, Joseph Nesline, Hemphill Pride, II, H. Paul Rico, and Glen Whittle. This request includes files maintained by the Justice Department and any of its divisions, offices, or bureaus, including the FBI, and by the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

C. Personal, disciplinary, investigative, or other files maintained on each of the following present or former executive branch employees: Justice Department attorneys Gerald McDowall, Reid Weingarten, and Robert Richter and FBI agents Anthony A. Amoroso, William J. Murphy, H. Paul Rico, Robert Foster, Thomas Dowd, Christopher Mazzella, and Geoffrey Santini.

D. All memoranda, notes, reports, photographs, sketches, or other material concerning any physical or mental examination or tests, or the results thereof, conducted with respect to any evidence, person, object, or place by or at the direction of the Justice Department or any of its officers or employees, including, without limitation, all records concerning examinations or tests of certain draft letters written by Judge Hastings and of other evidence gathered or received in connection with the investigation, prosecution, and trial of Judge Hastings and of William Borders and all records concerning any polygraph examination administered to Mayor Stephen Clark or others in connection with the investigation of the alleged disclosure of confidential information by Judge Hastings.

V. *Documents and Other Materials Gathered by or Submitted to the House, the Committee, the Subcommittee, the Managers, or Regular or Special Staff.* Judge Hastings further requests that copies of the following documents and other materials be delivered and that the originals be made available pursuant to this request, excepting only copies of documents or materials produced pursuant to sections I, II, III, or IV of this request or delivered prior to or during the Subcommittee's hearings: All documents and other materials concerning matters alleged in the Articles of Impeachment or in the Answer to Articles of Impeachment gathered by or submitted to the House or any member thereof, the Committee, the Subcommittee, the Managers, or regular or special staff. This request specifically includes photographs, sketches, memoranda, notes, reports, or other materials concerning any physical or mental examinations or tests, or the results thereof, conducted or performed with respect to any evidence, person, object, or place, including examinations or tests of electronic recordings or equipment, documents, and other physical materials; polygraph examinations; linguistic examinations; and examinations or tests conducted by consultants or organizations not regularly employed by the House.

VI. *Documents and Other Materials Which the House Intends to Offer at Trial Which are Material to Judge Hastings's Defense, Which are Exculpatory or Favorable to Judge Hastings, or Which May Lead to Such Exculpatory Material.* Judge Hastings further requests that copies of the following documents and other materials be delivered and that originals be made available pursuant to this request, excepting only copies of documents produced pursuant to Sections I, II, III, IV, or V of this request or delivered prior to or during the Subcommittee's hearings:

A. All books, papers, documents, photographs, or other tangible objects, or copies thereof, which the House intends to use as evidence in its case in chief at trial or which are material to the preparation of Judge Hastings's defense or which were obtained from, directly or indirectly, or belong to Judge Hastings.

B. All documents and other material which contain information that is exculpatory in nature or otherwise favorable to Judge Hastings or that may lead to material or information that is exculpatory or favorable to Judge Hastings.

Respectfully submitted,

John W. Karr, William G. McLain,
Ann B. Richardson,
Karr & McLain, Washington, DC.
Robert S. Catz,
Cleveland, OH.
Terence J. Anderson,
Coral Gables, FL.
Patricia Williams,
Miami, FL.

Counsel to United States District Judge Alcee L. Hastings.

Addendum A to Request

Resolution of the Judicial Council of the Eleventh Circuit Concerning the Judge Alcee L. Hastings Matter

Whereas the judges of the Judicial Council of the Eleventh Circuit have considered the request for Investigating Committee materials from the Judiciary Committee of the House of Representatives concerning the Judge Alcee L. Hastings matter;

Now therefore be it resolved that the members [1] of the Judicial Council of the Eleventh Circuit hereby release such material to Allan Baron, Counsel to the Criminal Justice Subcommittee of the House Judiciary Committee under the provisions of 28 U.S.C. § 372(C)14(A).

John Doar, Counsel to the Judicial Council's Investigating Committee, is authorized and hereby instructed to transmit the materials shown at Exhibit 1 to Mr. Baron.

Done at Atlanta, Georgia, this 25th day of September 1987.

---

[1] Circuit Judge Joseph W. Hatchett has indicated that from his reading of 28 U.S.C. 372(c) and Addendum Three of the Rules of the Eleventh Circuit (Rule for the Conduct of Complaint Proceedings Under 28 U.S.C.A. 372(c)), the Judicial Council of the Eleventh Circuit has no further power to act regarding the Judge Hastings matter which the council heretofore forwarded to the Judicial Conference of the United States. Consequently, Judge Hatchett has indicated that he will not participate in any council action regarding matters heretofore forwarded to the Judicial Conference.

For the Judicial Council:

NORMAN E. ZOLLER,
Secretary.

EXHIBIT 1

LIST OF INVESTIGATING COMMITTEE MATERIAL TO BE FURNISHED TO COUNSEL OF COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES IN CONNECTION WITH THE JUDGE ALCEE HASTINGS MATTER

1. FBI MATERIALS

a. Contacts with FBI—Vol. I–III.
b. Oversized Documents from FBI:
    Information furnished with October 28, 1985 letter (Aiken to Doar);
    Information furnished with February 13, 1986 letter (Aiken to Doar).
c. Original documents from FBI file.

2. WITNESS FILES

a. Judge Alcee L. Hastings.
b. ALH's Financial Disclosure Report—1980.
c. ALH's Financial Disclosure Report—1981.
d. ALH's Financial Disclosure Report—1982.
e. ALH's Financial Disclosure Report—1983.
f. ALH's Financial Disclosure Report—1984.
g. Economic Testimony.
h. Cynthia A. Rogers.
i. Delta Airlines.
j. General Telephone Co. (Tampa).
k. C&P Washington, D.C.
l. Neal Sonnett.
m. Loews L'Enfant Plaza Hotel.
n. Custodian of Records, ATF.
o. Wendy Loucks.
p. William Dredge.
q. William Murphy.
r. James Harmon.
s. Michael D. Grogan.
t. J. Kent Cameron.
u. Carol D. Skiles.
v. Peter Schopperle.
w. Richard MacClary.
x. Ronald R. Foster.
y. William G. Connelly.
z. Lucille A. Connelly.
aa. Linda L. Reel.
ab. John J. Simmons, Jr.
ac. Robert B. Foster.
ad. William Borders.
ae. Martha Rogers.
af. Dale E. Bird.
ag. Richard C. Blake, II.
ah. Paul Rico.
ai. Hemphill Pride.
aj. Robert J. Richter.
ak. Charlester Williams.
al. Barbara H. Katzen.
am. Stanley Preiser.
an. Joanne Tyson.
ao. John Shorter.
ap. Jesse McCrary.
aq. John Michael Owens.
ar. Brenda Young Russell.
as. G. Richard Plenty, Jr.
at. Landmark First National Bank.
au. American Airlines.

av. Joanne Farrington.
aw. Joseph Nesline.
ax. Rebecca Sutton.
ay. Catherine A. Bohn.
az. Broward Federal Savings & Loan.
ba. Kenneth J. Fishman.
bb. James Diechert.
bc. Anthony Amoroso.
bd. Walter Merry.
be. Reid Weingarten.
bf. Joel Hirschhorn.
bg. Judicial Advisory Committee (Hon. Howard Markey).
bh. Senora Avery (AT&T).
bi. Essie Thompson.
bj. Donna Mendez Myrill.
bk. G. Golar Williams.
bl. Mayflower Hotel (Carl Crawford).
bm. Shirley Pride.
bn. William Waterman.
bo. Madeline Carole Petty.
bp. Michael Taines.
bq. Sheraton Washington Hotel.
br. U. of South Carolina Telephone Records Custodian.
bs. Governor's Office of Education (Tel. Records).
bt. Bonnie McCrary.
bu. Andrew Chisholm.
bv. C.L. McMillian.
bw. Lottie Harvin.
bx. Andrew Mavrides.
by. Justice Woodrow Lewis.
bz. Harry B. Derry.
ca. Larry White—S.C. Probation Officer.
cb. Carolyn McIver.
cc. James Vickers.
cd. C&P Maryland.
ce. Kenneth Gaines.
cf. Marian Bridgman.
cg. Mike Malone.
ch. Laverne Boone—Eastern Airlines in Day 1: Richard Lowe.
ci. Robert Fritz.
cj. Jack E. Swerling.
ck. Bettina Ayers.
cl. Sheraton Inn (West Palm Beach).
cm. Phil Moscato.
cn. Dale A. Glenn.
co. Mike McCowsky.
cp. First National Bank of Atlanta.
cq. Sun Bank (for A.H. Defense Fund).
cr. Sun Bank (formerly Flagship).
cs. Chase Manhattan Bank.
ct. American National Bank.
cu. American Savings & Loan Association.
cv. Pontiac State Bank.
cw. Beverly Hilton Hotel.
cx. Stonebridge Gardens Condominium.
cy. Dupont Plaza Hotel.
cz. F. Lee Bailey.
da. Le Lion D'Or Restaurant.
db. Holiday Inn (Broward County).
dc. Riviera Hotel (Las Vegas).
dd. US Air.
de. Mary DeRosa.
df. Tom Romano.
dg. James Hogan.
dh. George Boutro.
di. Alzora Simmons.
dj. Lee McCoy.

dk. Georgetown Leather Design.
dl. Santini Brothers.
dm. Midway Express.
dn. Gibraltar Savings & Loan.
do. Louima Ruth Romano.
dp. David Helman.
dq. Patricia Williams.
dr. Shirley Ross.
ds. Pearl and Margaret.
dt. Chief of Police, West Palm Beach.
du. Air Florida.
dv. S.O. Bell, Broward County.
dw. Delta Airlines.
dx. George Boutro.
dy. Marshall G. Curran.
dz. Barbara E. Whiting.
ea. H.T. Smith.
eb. Larry White, U.S. Probation Officer.
ec. Barbara Jean Good (L'Enfant Plaza Hotel).
ed. Laverne Boone (Eastern Airlines).
ee. Kenneth M. Robinson.
ef. Pearl Dabreau.
eg. Margaret Dabreau.
eh. SA Michael Malone.
ei. Henry Gonzalez.
ej. Larry Herr.
ek. Earl Wallo.
el. Steven Allen.
em. SA Ralph Phillips.
en. SSA W. Dennis Aiken.
eo. SA Wayne McDonald.
ep. Georgetown Inn.
eq. Roger C. Spaeder.
er. Madeline Petty.
es. Louima Ruth Romano.
et. Neal R. Sonnett.
eu. Helen Powell.
ev. Jeannette Chappell, Delta.
ew. Jesse McCrary.
ex. John M. Owens.
ey. Rita Gray.
ez. SA John W. Wall, Dea.
fa. James Deichert.
fb. Albert Paul Benton, c/o SA Wall.
fc. Norman Carlson, BOP.
fd. Robert M. March, Clerk, USDC, FL.
fe. Betty Ann Williams.
ff. Jeffrey Miller.
fg. Daniel Simons.
fh. Alan Ehrlich.
fi. Isidore Katz.
fj. Noel B. Smith.
fk. Southern Bell Telephone Company, Columbia, South Carolina.
fl. Southern Bell (Dade/Broward).
fm. Betty Ann Williams.
fn. Dwight Pettit.
fo. Daniel Simons.
fp. Jeffrey Miller.
fq. Willie J. Washington (Eastern Airlines).
fr. Ed Muckinhaupt (Eastern Airlines).
fs. Katherine McKenzie (Eastern Airlines).
ft. Alan Ehrlich.
fu. Allen Ehrlich.
fv. Detroit Plaza Hotel.
fw. Carrillon Hotel, Miami Beach.
fx. Casa Marina Resort, Key West.
fy. Pan American World Airways.

fz. Eastern Airlines.
ga. Best Western Motel, St. Charles.
gb. Sheraton Washington Hotel.
gc. Key Wester Resort Inn.
gd. New Jersey Bell Telephone.
ge. Pacific Northwest Bell, Seattle.
gf. New York Telephone.
gg. Pacific Telephone & Telegraph, L.A.
gh. General Telephone Company of California.
gi. Bell Telephone of Philadelphia.
gj. Illinois Bell.
gk. Michigan Bell Telephone.
gl. South Western Bell, St. Louis.
gm. Southern Bell, Atlanta.
gn. South Central Bell, New Orleans.
go. Cincinnati Bell.
gp. Ohio Bell Telephone.
gq. New England Telephone & Telegraph Co.
gr. Central Telephone Co., Las Vegas.
gs. Bell Atlantic, Arlington.
gt. Southern Bell, Charlotte.
gu. Wisconsin Bell.
gv. Southern Bell, Columbia, S.C.
gw. C&P of Virginia, Richmond.
gx. General Telephone Co., Tampa.
gy. United Telephone, Ft. Myers.
gz. Southern Bell, Jacksonville.
ha. Central Telephone Co., Tallahassee.
hb. North State Telephone, High Point, N.C.
hc. Carolina Telephone & Telegraph, Manteo.

3. NOTEBOOKS

a. Eleventh Circuit Paragraph Chronology with supporting materials (5 volumes):
Vol. 1.—¶¶ 1-55.
Vol. 2.—¶¶ 56-116.
Vol. 3.—¶¶ 117-155.
Vol. 4.—¶¶ 136-234.
Vol. 54.—¶¶ 235-291.

b. Chronology *United States* v. *Thomas and Frank Romano,* No. 78-364-Cr-ALH

c. *United States* v. *Hastings,* No. 81-596-Cr-ETG:

A Digest of Pleadings, Legal Memoranda, Orders and Memorandum Opinions Filed.

Summary of Trial Transcript (Book 1) Exclusive of Judge Hastings' Testimony.

Digest of Judge Hastings' Testimony and Other Statements He Placed on the Record During the Course of His Trial (Book 2).

d. Day-to-day Analysis of Activity Beginning Friday, January 2, 1981, and Concluding Tuesday, October 13, 1981.

e. Telephone Number Analysis:

(1) List of Relevant Telephone Numbers.

(2) Telephone Numbers That Have Been Identified.

(3) Long Distance Telephone Calls Billed to Residence of Jesse J. McCrary, Jr., 305-945-3784, January 1, 1981 through June 8, 1981 (IC-2020A), 305-758-5707, June 8, 1981 through June 16, 1981 (IC-2020A), and 305-758-5707, June 17, 1981 through October 31, 1981 (IC-2020).

(4) Record of Long Distance Telephone Calls Billed to Residence of Hemphill Pride, 803-254-0541, April 16, 1981 through July 16, 1981, and 803-252-5943, July 17, 1981 through October 30, 1981.

(5) Long Distance Telephone Calls Billed to Residence of Alberta Borders, 202-398-6321, April 30, 1981 through October 13, 1981 (IC-62).

(6) Consolidated Record of Long Distance Telephone Calls Billed to Residence of William C. Dredge, a/k/a Howard Schlosser, 305-945-9939, January 1, 1980 through December 8, 1980 (IC-2608), and to Bill's Place, 305-891-0737, January 2, 1980 through December 27, 1980 (IC-2609) (Excluding Any Calls Billed to Bill's Place May 14 through June 23, Which Are Missing From Bill's Place Phone Records).

(7) Consolidated Record of Long Distance Telephone Calls Billed to Residence of William C. Dredge, a/k/a Howard Schlosser, 305-945-9939, January 3, 1981 through March 31, 1981 (IC-130), April 1, 1981 through October 7, 1981 (IC-2046), and to

Bill's Place, 305-891-0737, January 8, 1981 through March 1, 1981 (IC-2609), March 2, 1981 through October 12, 1981 (IC-65).

(8) Record of Long Distance Telephone Calls Billed to the Chambers of Judge Alcee L. Hastings, 305-350-4228, 305-350-4279, 305-350-4289, 305-350-4290, January 1, 1980 through July 20, 1982.

(9) Record of Long Distance Telephone Calls Billed to Residence of Judge Alcess L. Hastings 305-731-8176, January 1, 1979 through December 25, 1979 (IC-2681) and December 26, 1979 through December 31, 1980 (IC-2680).

(10) Consolidated Record of Long Distance Telephone Calls Billed to Residence of Judge Alcee L. Hastings 305-731-8176, January 1, 1981 through October 13, 1981, and Chambers of Judge Alcee L. Hastings, 305-350-4228, 305-350-4279, 305-350-4290, 305-350-4289, February 24, 1981 through October 13, 1981.

(11) Record of Long Distance Telephone Calls Billed to Office of James W. Cobb and William Borders, 202-387-1101, 387-1102, 387-1103, 387-1104, 387-1105, 387-2229, and 387-2255, June 27, 1981 through August 17, 1981 (IC-63), and September 1, 1981 through September 16, 1981 (IC-64).

(12) Long Distance Telephone Calls Billed to Residence of Mildred L. Hastings, 305-486-0733, January 2, 1981 through October 13, 1981 (IC-69).

(13) Record of Long Distance Telephone Calls Billed to the Chambers of Judge Alcee L. Hastings, 305-350-4228, 305-350-4279, 305-350-4289, 305-350-4290, 305-350-5951, November 30, 1979 through September 20, 1982.

(14) Confidential Memorandum re: Telephone System in Judge Hastings' Miami Chambers.

(15) Confidential Memorandum re: Judge Hastings' Fort Lauderdale Chambers Telephone Records for 1981-82.

4. DIGEST OF TESTIMONY OF WITNESSES BEFORE INVESTIGATING COMMITTEE BY DAY

Volume I—Day 1—May 20, 1985:

Preliminary, Jeanette Chappell, Richard Lowe, and Cynthia Ann Rogers.

Volume II—Day 2—May 21, 1985:

Angela Heller, Elizabeth A. Royer, Eunice Polloway, Linwood Gerald Greene, Jr., Neal R. Sonnett, Albert H. Blocker, and Charles Friedrichs.

Volume III—Day 3—May 22, 1985:

Wendy R. Loucks and William C. Dredge.

Volume IV, V & VI—Day 4-6—May 23, 24, 25, 1985:

William J. Murphy, Robert B. Foster, Carol Darlene Skiles, J. Kent Cameron, Michael D. Grogan, Peter Schopperle, William G. Connelly, Lucille A. Connelly, Linda Louise Reel, John J. Simmons, Jr., Dale E. Bird, William A. Borders, Jr., Martha Rogers, Richard C. Blake, H. Paul Rico, Hemphill Pride II, and Jimmy C. Harmon.

Volume VII—Day 7—May 27, 1985:

Robert Isacc Richter, Charlester Williams, Barbara H. Katzen, Stanley Preiser, John A. Shorter, Jr., and Joanne T. Colt.

Volume VIII—Day 8—May 28, 1985:

Daniel Scott Simons, John Michael Owens, Brenda Y. Russell, G. Richard Plenty, Jr., and Jesse J. McCrary, Jr.

Volume IX—Day 9—May 29, 1985:

James Deichert, Joseph R. Palese, Jr., Catherine A. Bohn, Rebecca Nesline, Joseph Nesline, Joanne Farrington, Ellen Van Sant, Kenneth J. Fishmann, and Rick N. Ellis.

Volume X—Day 10—May 30, 1985:

Joel Hirschhorn, Reid H. Weingarten, and Joel Hirschhorn.

Volume XII—Day 12—August 12, 1985:

Howard T. Markey, Donna Myrill, Senora Edwards Avery, and Essie M. Thompson.

Volume XIII—Day 13—August 13, 1985:

Eleanor Golar-Williams, Carl Crawford, Shirley Caldwell Pride, Linda Louise Reel, Ronald R. Foster, John J. Simmons, Jr., William Waterman, Michael Taines, and Madeline Carol Petty.

Volume XV—Day 15—August 15, 1985:

Joseph W. Polinski, Bonnie Yvette McCrary, and Loraine Damotta.

Volume XVI—Day 16—August 16, 1985:

Andrew James Chisholm, Lottie Harvin, C.L. McMillian, and Andrew Paul Mavrides.

Volume XVII—Day 17—September 4, 1985: Justice James Woodrow Lewis

Volume XVIII—Day 18—October 1, 1985:

Carolyn Rosito Mciver, John Larry White, James L. Vickers, and Harry B. Derry.

Volume XIX—Day 19—October 2, 1985:

Laverne Boone, Kenneth W. Gaines, Andrew James Chisholm, Marion Frances Bridgman, Robert C. Lewis, Angela Heller, and Michael P. Malone.

Volume XX—Day 20—October 24, 1985:

Hazel Stodgill, Phillip Moscato, Bettina Ayres, Robert A. Fritz, Jr., Michael J. Meczkowski, Linda Senn Roof, Dale Allen Glenn, and Jack Swerling.

Volume XXI—Day 21—April 7, 1986:

Barbara Whiting-Wright, H.T. Smith, Linda Senn Roof, Angela Heller, Eunice Polloway, and Linwood Gerald Green, Jr.

Volume XXII—Day 22—April 8, 1986:

Larry Herr, Maragaret Owens, Barbara Jean Goodwyn, Pearl Dabreua Mapp, Henry Gonzalez, John L. White, and Laverne Boone.

Volume XXIII—Day 23—April 9, 1986:

William J. Murphy, Jr., Helen N. Powell, Ralph Phillips, Wayne McDonald, Louima Ruth Romano, William Franklin Burruss, Jr., and Dennis Aiken.

Volume XXIV—Day 24—April 10, 1986:

Jeannette Chappell and Jesse J. McCrary, Jr.

Volume XXV—Day 25—April 11, 1986: James Deichert.

5. NOTEBOOK—IMPEACHMENT MATERIAL

ADDENDUM B TO REQUEST

RESOLUTION OF THE JUDICIAL COUNCIL OF THE ELEVENTH CIRCUIT CONCERNING THE JUDGE ALCEE L. HASTINGS MATTER

Whereas the judges of the Judicial Council of the Eleventh Circuit have considered the request for supplemental Investigating Committee materials from the Judiciary Committee of the House of Representatives concerning the Judge Alcee L. Hastings matter;

Now therefore be it resolved, That the members [1] of the Judicial Council of the Eleventh Circuit hereby release such material to Allan Baron, Counsel to the Criminal Justice Subcommittee of the House Judiciary Committee under the provisions of 28 U.S.C. § 372(C)14(A).

John Doar, Counsel to the Judicial Council's Investigating Committee, is authorized and hereby instructed to transmit the materials shown at Exhibit 2 with additions to Mr. Baron.

Done at Atlanta, Georgia, this 9th day of October 1987.

(For the Judicial Council)
NORMAN E. ZOLLER,
Secretary.

EXHIBIT 2

LIST OF INVESTIGATING COMMITTEE MATERIAL TO BE FURNISHED TO COUNSEL OF COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES IN CONNECTION WITH THE JUDGE ALCEE HASTINGS MATTER

FILE DRAWER 1

U.S. v. Pride—Cr. 77-214; Civil Action No. 80-1649-9.

U.S. District Court, District of South Carolina.

FILE DRAWER 2

U.S. v. *Borders,* exhibits 1 of 1.

U.S. v. *Hastings,* exhibits 1 of 2.

U.S. v. *Hastings,* exhibits 2 of 2.

---

[1] Circuit Judge Joseph W. Hatchett has indicated that from his reading of 28 U.S.C. 372(c) and Addendum Three of the Rules of the Eleventh Circuit (Rule for the Conduct of Complaint Proceedings Under 28 U.S.C.A. 372(c)), the Judicial Council of the Eleventh Circuit has no further power to act regarding the Judge Hastings matter which the council heretofore forwarded to the Judicial Conference of the United States. Consequently, Judge Hatchett has indicated that he will not participate in any council action regarding matters heretofore forwarded to the Judicial Conference.

Certain Original exhibits not in the clerk's received list—contained in closed yellow folders.

Other complaints:

5/27 handwritten memo of John Doar.

6/18/83 letter Zukernick to Judge Hodges.

6/18/83 letter Hooper to Judge Hodges.

6/24/88 letter Judge Hodges to Doar.

FILE DRAWER 3

Delano Stewart Material.

Pride, Hemphill—South Carolina Disciplinary Procedures.

Police Report of Found Property of Alcee L. Hastings on 5/1/82.

Documents Responsive to the subpoena served on the Judicial Advisory Committee on Judicial Activities.

Hastings' Discovery Material—From FBI file—Lose, Not Inventoried.

Hastings' Discovery Material—From FBI file—Inventoried Items.

FILE DRAWER 4

United States v. *Alcee L. Hastings,* Transcript of hearing on application for release of sealed documents.

Summary of Testimony of Alcee L. Hastings, January 28, 1983.

Investigating Committee Witness Digests:

I. Telephone Records.

II. Borders' Office Records.

III. Airline Records.

IV. Hotel Records.

V. Contributions Records.

VI. The Conspiracy.

VII. Dredge's Credibility.

VIII. Events of September 12, 1981.

IX. Events of September 16, 1981.

X. Events of October 9, 1981: (A) Washington, (B) Miami.

XI. Surveillance of William Borders: (A) July 21, 1981, (B) August 21-22, 1981, (C) September 11-12, 1981, (D) September 19, 1981, (E) October 9, 1981.

XII. Law Clerks.

XIII. Events During Discovery.

XIV. Pride's Reinstatement to the Bar.

FILE DRAWER 13

Flight Records.

Indices and Analysis of Telephone Logs.

Telephone contacts:

Judge Hastings—Pride, Borders—Pride, P. Williams—McCrary, Mrs. Hastings—McCrary, Judge Hastings—McCrary, Judge Hastings—P. Williams, Dredge—Nesline, Borders—Shorter, Borders—McCrary, Borders—Nesline, Judge Hastings—Borders, Borders—Dredge, Borders—Rico, Logs re: Nesline, Logs re: Shorter, Logs re: Judge Hastings, Logs re: Pride, Logs re: McCrary, Logs re: Dredge.

U.S. v. *Borders,* Arrest and Preliminary Hearing Matters.

U.S. v. *Dredge,* Court Papers; Documents received from U.S. Attorney; Materials received from Judge Kaufman.

Borders v. *Reagan,* Civil No. 81-1312, U.S. District Court for the District of Columbia.

Papers in *U.S.* v. *Santiago Cortes,* Cr. 85-167, USDC, Dist. of So. Carolina (Patricia Williams, defense counsel).

FILE DRAWER 18

Probation files: Frank Romano and Thomas Romano.

COURT RECORDS

IN THE MATTER OF COMPLAINTS FILED AGAINST UNITED STATES DISTRICT JUDGE ALCEE L. HASTINGS

Motion of the Investigating Committee of the Judicial Council of the Eleventh Circuit to Deny Joel Hirschhorn's Claim of Attorney-Client Privilege Asserted on Behalf of Judge Alcee L. Hastings with Respect to Certain Questions and to Order the Production of Certain Documents Withheld by Hirschhorn on the Ground of the Work Product Doctrine.

Motion of the Investigating Committee of the Judicial Council of the Eleventh Circuit for an Order Directing Patricia Williams to Comply with Subpoena and Subpoena Duces Tecum.

Motion of the Investigating Committee of the Judicial Council of the Eleventh Circuit for an Order Directing David Helman to Comply with Subpoena and Subpoena Duces Tecum.

Preliminary Response of Joel Hirschhorn and Report in Response to Clerk's Notice of March 17, 1986 (Joel Hirschhorn).

Report in Response to March 17, 1986 Notice (Patricia Graham Williams).

MISCELLANEOUS

Drug Enforcement Agency File—Re: William Dredge.

Initial Summary of *U.S.* v. *Hastings* (JD).

Additions to Exhibit 2

List of Investigating Committee Material To Be Furnished to Counsel of Committee on the Judiciary of the House of Representatives in Connection With the Judge Alcee Hastings Matter

MISCELLANEOUS

Letter dated 5/28/84 from James Kreager to John Doar re: Judge Alcee Hastings.

Telephone records of Judge Hastings' chambers obtained from administrative office of United States Courts.

Addendum C to Request

Composite List of Witnesses Called in United States v. Borders, United States v. Hastings, Investigating Committee Hearings, Special Committee Hearings, and Subcommittee Hearings

Aiken, W. Dennis, Alaimo, Anthony A., Allen, Steven A., Amoroso, Anthony, Avery, Senora Edwards, Ayres, Bettina, Benton, Albert Paul, Bird, Dale E., Blake, Ricard C., II, Blocker, Albert H., Bohn, Catherine A., Boone, Laverne, Borders, William A., Jr., Boutro, George, Bridges, Roger, Bridgman, Marion Francis, Brown, Benjamin Daniel, Burns, Guy M. and Burrus, William Franklin, Jr.

Cameron, J. Kent, Chappell, Jeanette, Chisholm, Andrew James, Clark, Stephen P., Clark, Zende Lamar, Colt, Joanne Tyson, Connelly, Lucille A., Connelly, William G., Cortez, Miguel J., Jr., Crawford, Carl, Cruel, Barbara, Crump, John, Cunningham, I. J., and Curran, Marshall G., Jr.

Damotta, Loraine, Dawson, Warren Hope, Deichart, James, Derry, Harry Bishop, Doar, John, Dredge, William C., Duncan, Charles T., Edgecombe, Phil K., Ehrlich, Alan Gordon, Ellis, Rick N., Fales, Michael, Farrington, Joanne, Fishman, Kenneth J., Forsht, Donald, Foster, Robert B., Foster, Ronald R., Friedrichs, Charles, and Fritz, Robert A., Jr.

Gaines, Kenneth W., Gary, Willie E., Gibson, Joseph Wilbert, Glatzer, Phillip, Glenn, Dale Allen, Goldstein, Lisa, Gonzalez, Henry, Goodwin, Barbara Jean,[1] Greene, Linwood Gerald, Jr., Grogan, Michael D., and Gunn, James.

Harmon, Jimmy C., Harvin, Lottie, Hastings Alcee Lamar, Hastings, Mildred, Heller, Angela, Herr, Larry, Hirschhorn, Joel, Hodges, William, Hoeveler, William M., Katz, Richard, Katzen, Barbara Haworth, Latimer, Henry, and Lewis, Carolyn.

Lewis, James Woodrow, Lewis, Robert C., Lipman, David, Loucks, Wendy R., Lowe, Richard A., Lucy, William, MacClary, Richard, Malone, Michael P., Mance, Robert, Mapp, Pearl Dabreau, Markey, Howard T., Martinez, Roberto, Mason, Don, Mavrides, Andrew Paul, and Mazzella, Christopher R.

McCrary, Ronnie Yvette, McCrary, Jesse J., Jr., McDonald, Wayne A., McIver, Carolyn Rosito, McMillan, C.L., Meczkowski, Michael, J., Merritt, Alvoyd, Miller, Jeffrey A., Moscatto, Phillip, Murphy, William J., Jr., Myrill, Donna Mendez, Nesline, Joseph, and Nesline, Rebecca Sutton.

---

[1] Formerly Barbara Cruel; testified under both names.

Owens, John Michael, Owens, Margaret Dabreau, Paine, James C., Palese, Joseph H., Jr., Perry, Herman C. Jr., Perry, Mathew J., Pettit, Alvin Dwight, Petty, Madeline Carole, Phillips, Ralph Ian, Plenty, G. Richard, Jr., Polinski, Joseph W., Polloway, Eunice, Powell, Helen N., Preiser, Stanley, Pride, Hemphill, II, and Pride, Mildred.

Pride, Shirley, Pruitt, Robert, Reel, Linda Louise, Reid, Herbert O., Richter, Robert I., Rico, H. Paul, Rivero, Johnny, Robinson, Ken, Rogers, Cynthia Ann, Rogers, Edward, Rogers, Martha, Romano, Frank, Romano, Louima Ruth, Roof, Linda Senn, Ross, Shirley, Royals, Flauren Joyette, Royer, Elizabeth A., and Russell, Brenda Y.

Santini, Geoffrey C., Schopperle, Peter, Selig, Simon Stephen, III, Seymour, Sylvia, Shorter, John A., Jr., Shuy, Roger, W., Simmons, Deborah Ramona, Simons, John J., Jr., Simmons, Daniel Scott, Skiles, Carol Darlene, Smith, Harold Teliaferro, Jr., Snead, Paul, Sonnett, Neal, Spaeder, Roger, C., Stallworth, Norma, Stevenson, Ralph, Stewart, Delano, Stodgill, Hazel, and Swerling, Jack.

Taines, Michael, Thomas, Daivid L, Thompson, Essie M., Thompson, Geraldine Grey, Van Sant, Ellen, Vickers, James L., and Wall, John W.

Wallo, Earle, Walsh, Bryon O., Washington, Wilie James, Waterman, William, Weingarten, Reid H., White, John Larry, Whiting, Barbara, Whiting-Wright, Barbara E.,[2] Whittle, Glenn, Williams, Betty Ann, Williams, Charlester, Williams, Dudley R., Williams, Eleanor Golar, and Williams, Patricia Graham.

ADDENDUM D TO REQUEST

BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE OF THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES; HEARINGS IN THE MATTER OF THE IMPEACHMENT INQUIRY CONCERNING UNITED STATES DISTRICT JUDGE ALCEE L. HASTINGS

JUDGE HASTINGS' REVISED PROVISIONAL WITNESS LIST

Judges who have served with United States District Judge Alcee L. Hastings:

The Hon. James Lawrence King, Chief Judge, United States District Court for the Southern District of Florida.

The Hon. William Hoeveler, United States District Judge for the Southern District of Florida.

The Hon. Edward B. Davis, United States District Judge for the Southern District of Florida.

The Hon. Peter Palermo, United States Magistrate for the Southern District of Florida.

The Hon. Patricia Kyle, United States Magistrate for the Southern District of Florida.

Judges and other judicial officials who have participated in cases or administrative proceedings affecting United States District Judge Alcee L. Hastings:

The Hon. Warren Burger, former Chief Justice of the United States.

The Hon. John C. Goldbold, former Chief Judge, United States Court of Appeals for the Eleventh Circuit.

The Hon. Frank M. Johnson, Jr., Circuit Judge, United States Court of Appeals for the Eleventh Circuit.

The Hon. Gerald B. Tjoflat, Circuit Judge, United States Court of Appeals for the Eleventh Circuit.

The Hon. Sam C. Pointer, Jr., Chief Judge, United States District Court for the Northern District of Alabama.

The Hon. William C. O'Kelley, United States District Judge for the Northern District of Georgia.

The Hon. Edward T. Gignoux, Senior United States District Judge for the District of Maine.

The Hon. Frank Kaufman, United States District Judge, District of South Carolina.

The Hon. Frank Coffin, Chief Judge, United States Court of Appeals for the First Circuit.

The Hon. W.W. Wilkens, United States District Judge, District of South Carolina.

The Hon. John Lewis Smith, Jr., Senior United States District Judge, District of Columbia.

---

[2] Formerly Barbara Whiting; testified under both names.

William F. Foley, former Director, Administrative Office of the United States Courts.

L. Ralph Mecham, Director, Administrative Office of the United States Courts.

James Macklin, Deputy Director, Administrative Office of the United States Courts.

John Doar, Esq.

Sidney O. Smith, Esq.

Bernard Taylor, Esq.

Norman A. Zoller, Circuit Executive for the Eleventh Circuit.

Thomas Reese, former Circuit Executive for the Eleventh Circuit.

Justice Department lawyers who made decisions on matters affecting United States District Judge Alcee L. Hastings:

Rudolph W. Giuliani, former Associate Attorney General, United States Department of Justice.

William F. Weld, former Assistant Attorney General, United States Department of Justice.

Gerald McDowell, Chief, Public Integrity Section, Criminal Division, United States Department of Justice.

Robert Richter, former Deputy Chief, Public Integrity Section, United States Department of Justice.

Reid Weingarten, former attorney for Public Integrity Section, United States Department of Justice.

William Hendricks, Deputy Chief, Public Intergrity Section, United States Department of Justice.

John Campbell, attorney, Public Integrity Section, United States Department of Justice.

Eric Holder, attorney, Public Integrity Section, United States Department of Justice.

S. Michael Levin, former Chief, Miami Strike Force, United States Department of Justice.

Martha Rogers, former attorney, Miami Strike Force, United States Department of Justice.

John Ownes, former attorney, Miami Strike Force, United States Department of Justice.

Atlee Wampler, former United States Attorney for the Southern District of Florida.

Steve Allen, former United States Attorney for the District of Maryland.

James Deckhart, for attorney, Miami Strike Force, United States Department of Justice.

Agents of the Federal Bureau of Investigation who made or participated in decisions affecting United States District Judge Alcee L. Hastings:

William Webster, former director, Federal Bureau of Investigation.

Floyd I. Clark, Assistant Director, Federal Bureau of Investigation.

John Kelly, Unit Chief, Federal Bureau of Investigation Headquarters.

Sean Hilly, Supervisory Special Agent, Federal Bureau of Investigation Headquarters.

Robert Foster, Special Agent, Federal Bureau of Investigation, Washington, D.C.

Walter Schemplein, Supervisory Special Agent, Federal Bureau of Investigation Headquarters.

John P. O'Neal, Supervisory, Special Agent, Federal Bureau of Investigation Headquarters.

Anthony Amoroso, Special Agent in Charge, Federal Bureau of Investigation, Miami office.

Christopher Mazzella, Special Agent, Federal Bureau of Investigation, Miami office.

Geoffery Santini, Special Agent, Federal Bureau of Investigation, Miami office.

Other witnesses with material information:

Chief Judge Frank J. Battisti, United States District Court, Northern District of Ohio.

The Hon. Miles A. Lord, Retired United States District Judge, District of Minnesota.

The Hon. Hames G. Carr, United States Magistrate, Northern District of Ohio.

Bernard J. Penetta, II, Esq.

Ira Kurzban, Esq.

Professor Irwin Stotsky.

Cornelius Allen, Staff, Metro-Miami Action Plan.

Pat Thomas, Staff, Metro-Miami Action Plan.

Flauren Joyette Royals, Staff, Metro-Miami Action Plan.
Deborah L McMullen.
Msgr. Bryan Walsh.
Theodore Sakowtiz, Esq.
Ray Ferrero, Esq.
Edward Stamm, Esq.
Larry Stern, Esq.
Chris McAliley, Esq.
Myles Malman, Esq.
Ray Takiff, Esq.
Barbara Petras, Esq.
Bruce Zimet, Esq.
Mario Cano, Esq.

Respectfully submitted,

JOHN W. KARR,
WILLIAM B. MCLAIN,
ROBERT S. CATZ,
TERENCE J. ANDERSON,
PATRICIA WILLIAMS,
Counsel for United States District Judge Alcee L. Hastings.

May 26 1988 [revised June 1, 1988].

ADDENDUM E TO REQUEST

LIST OF OTHER PERSONS MENTIONED AS HAVING PERTINENT INFORMATION

Aldridge, Gary
Aumock, Robert
Babcock, Barbara
Bell, Griffin
Bickley, Betty
Borders, Alberta
Bonehill, Richard
Buckley, John
Campbell, Donald
Chaconas, Peter
Corbin, Harry Nelson
Crawford, Curtis C.
Dennis, Jim (or James)
Evans, John
Ferguson, Peter J.
Foster, Robert Carr
Fuller, Vincent
Gianakis, Peter
Gianotti, Richard J.
Gray, Rita
Harrigan, Lawrence
Hogan, Charles Joseph
Howard, Carolyn
Huguley, Claude
Husick, Ben
Katz, Larry
Kellner, Leon
Kingston, Daniel C.
Kolker, Peter
Marcoline, Peter
McCullers, Margaret
Moran, Jean A.
Nadolsky, Harry
Pantin, Leslie, Jr.
Pride, Maude P.
Romano, Thomas
Schnapp, Mark
Simpson, Thomas
Smith, Noel

Steinhart, Frank
Stierheim, Merrett R.
Sumpter, Lanny J.
Trafficante, Santos
Usher, Joseph
Zuckerman, Roger

EXHIBIT 5

[In the Senate of the United States Sitting As a Court of Impeachment]

In re Impeachment of Judge Alcee L. Hastings

RESPONSE OF THE HOUSE MANAGERS TO RESPONDENT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE MATERIAL

Respondent's "First Request for Production of Documents and other tangible Material" is unprecedented and unwarranted. This request seeks nothing less than everything the House of Representatives examined in the course of its investigation. Even if Respondent were on trial for his life and liberty he would not be afforded anything approaching the scope of discovery sought herein. Respondent's Request is an attempt to cripple the impeachment process.

Extensive disclosure to Respondent of materials obtained by the House has already occurred.[1] Moreover, the House is willing to provide any additional materials that would tend to accomplish the legitimate objective of avoiding unfair surprise to the parties, including providing relevant witness statements and evidence, if any, that might tend to be exculpatory. This response will afford Respondent reasonable discovery of relevant materials while at the same time permitting the trial to proceed on schedule.

In assessing Respondent's Request, it first should be noted that *any* formal discovery in an impeachment proceeding is unprecedented. *Jefferson's Manual,* H.R. Doc. No. 279, 99th Cong., 2d Sess., *Hind's Precedents of the House of Representatives* (1907), and *Cannon's Precedents of the House of Representatives,* H.R. Doc. No. 661, 94th Cong., 2d Sess. (1977) contain no references which would support discovery by the respondent in an impeachment trial. Moreover, the Senate Impeachment Rules do not provide for any discovery practice. Finally, a review of both English and American impeachment trials does not reveal any instance in which discovery took place.[2]

In the impeachment of Judge Harry Claiborne, the respondent filed a "Motion for Discovery," asking the Senate to:

"... compel the discovery of previously sealed reports, transcripts of grand jury proceedings and exculpatory materials. The production of such materials is necessary and appropriate for the Senate to fulfill its co-equal role in reviewing the full record and determining whether the Executive and the Judicial Branches have fulfilled their Constitutionally mandated duty of providing substantive due process to Respondent, Judge Harry E. Claiborne."[3]

In particular, the respondent sought impeaching and exculpatory evidence which he claimed was likely to be found in certain grand jury testimony and correspondence.[4]

The House Managers opposed Judge Claiborne's Motion for Discovery on the grounds that none of the materials sought by the respondent were in the possession of the House of Representatives, but rather were held solely by non-parties to the impeachment proceeding. The Managers contended that Judge Claiborne had not demonstrated that the information requested could not be obtained directly from those third parties. The Managers argued that the respondent should not be allowed to use the impeachment proceeding to obtain documents which he could not otherwise obtain from a federal grand jury or from the Executive Branch. The House further noted that the respondent had been provided at his criminal trial with material, including grand jury testimony, concerning the witnesses that the government presented at trial and upon which the House intended to place reliance during the impeachment proceedings.[5]

Judge Claiborne's discovery motion was presented to the Rule XI committee appointed to take evidence in his case. After deliberation behind closed doors, the Chairman of the Rule XI committee, Senator Mathias, noted:

Footnotes at end of article.

". . . The motion seeks assistance in obtaining evidence which may tend to exculpate Judge Claiborne. If the motion could be understood to ask the managers, who are the prosecutors in this impeachment proceeding, to provide to Judge Claiborne any exculpatory material which they possess, then, even though the motion is unprecedented in an impeachment proceeding to my knowledge, there might be some reason to grant it. However, the motion appears to be directed at information possessed by executive and judicial authorities and overlaps, with one exception, subpoenas which Judge Claiborne has requested to establish his allegations of prosecutorial and judicial misconduct.[6]

The Chairman then ruled that a decision would be reserved on these matters. The record does not reflect that the motion was further considered. Accordingly, the Claiborne impeachment proceeding does not support Respondent's request.

As the House previously stated:

"This lack of precedent for pretrial discovery in an impeachment proceeding makes sense in light of the structure of our Government. The House of Representatives and Senate, like the House of Commons and the House of Lords, are coordinate parts of the Legislative Branch. The House of Representatives does not have the authority to order the Senate to act in a particular manner. Likewise, the Senate does not have the authority to compel the House of Representatives to take certain action, including the disclosure of investigative files to a respondent in an impeachment proceeding. The fact that the House of Representatives presents the Articles of Impeachment to the Senate for trial, as required by the Constitution, does not in any way limit its independent authority as one of the two houses of Congress".[7]

Notwithstanding the consistent history rejecting discovery in impeachment cases, the House Managers are prepared to provide Respondent with documentation he needs to avoid surprise at trial. A copy of any material falling into any one of the following three categories which has not already been provided to Respondent, will be provided by the House Managers:

A. Any document, tape or other tangible evidence the House Managers intend to use at trial;

B. Any statement of a witness to be called at trial that is sworn, adopted or approved by the witness; or

C. Any transcribed statement by a witness to be called at trial which is a substantially verbatim recital of an oral statement by the witness and was recorded contemporaneously with the making of such statement.

D. Any exculpatory evidence.

It must be emphasized the Respondent and his counsel have had access to extensive materials for months and even years. Under Rule 16 of the Federal Rules of Criminal Procedure at his criminal trial, Judge Hastings was afforded considerable discovery, including grand jury and other witness statements and exculpatory material. In addition, the Investigating Committee of the Eleventh Circuit which investigated the allegations of bribery conspiracy provided Respondent and his counsel access to some 2,800 exhibits, as well as a 4,000 page transcript of the testimony of witnesses who appeared before that committee.

Thereafter, the House of Representatives gave Respondent copies of both the exhibits and the transcripts from the Eleventh Circuit Investigating Committee. In addition, all of the materials introduced at the House Subcommittee hearings, including a 14 volume Statement of Information with thousands of pages of documents and exhibits were given to Respondent. Finally, Respondent sought and obtained the record of the Eleventh Circuit Special Committee which investigated the allegation that Respondent leaked confidential information obtained in his capacity as supervisory judge of an authorized wiretap.

In short, Respondent already has in his possession thousands of pages of discovery materials. The documents that remain to be turned over under the proposal of the House Managers are few in number and length. Their review provides no justification whatsoever for any delay in the trial.

Respondent's request, on the other hand, is virtually coextensive with all documents in the possession of the House of Representatives. The mere process of identifying and duplicating all these materials would take an extended time. In addition, Respondent undoubtedly will use the volume of the materials as an excuse to petition the Senate for a delay of the trial in order to examine those materials in detail. This should not be permitted, particularly in light of the fact that Respondent could have sought many of these materials from their original source at a much earlier time, but did not.[8] Moreover, the materials consist primarily of items that are not original factual information, but rather, are the analyses by investigators of material already provided to Respondent.

Respondent's legitimate interests will be protected under the proposal of the House Managers. To the extent *any* of the requested materials fall within the categories described above—evidence intended to be introduced, sworn or transcribed statements of trial witnesses, and exculpatory evidence—the House will disclose them. However, consistent with the principles discussed herein, the House Managers' disclosure proposal is conditioned on the imposition of a reciprocal rule requiring Respondent to provide to the House, to wit:

A. all documents, tapes or other tangible evidence Respondent intends to use at trial;

B. any statement of a witness to be called at trial that is sworn, adopted or approved by the witness; and

C. any transcribed statement by a witness to be called at trial which is a substantially verbatim recital of an oral statement by the witness and was recorded contemporaneously with the making of such statement.

These materials are sought to avoid unfair surprise at trial and to expedite the handling of documentary evidence.

Respectfully submitted,

THE U.S. HOUSE OF REPRESENTATIVES.
ALAN I. BARON,
Special Counsel.

Managers of the House of Representatives:

Jack Brooks, John Conyers, Jr., Don Edwards, John Bryant, Hamilton Fish, Jr., George W. Gekas.

Impeachment Trial Staff:

Alan I. Baron, Special Counsel; Janice E. Cooper, Assistant Special Counsel; Patricia Wynn, Assistant Special Counsel; Lori E. Fields, Assistant Special Counsel.

House Judiciary Committee Staff Participating in Impeachment Trial Preparation:

William M. Jones, General Counsel; Alan F. Coffey, Jr., Chief Associate Counsel; Daniel M. Freeman, Counsel; Peter Levinson, Associate Counsel; Raymond V. Smietanka, Associate Counsel.

January 17, 1989.

FOOTNOTES

---

[1] See infra, and Reply of the House Managers to the September 8, 1988 letter from the Senate Committee on Rules & Administration, at 9-10 (hereinafter "Reply of the House Managers").

[2] Id. at 10-11.

[3] Reams, Jr., and C. Gray, *The Congressional Impeachment Process and the Judiciary; Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne*, Vol. 2 at 278 (1987) (hereinafter "*Claiborne*").

[4] "Memorandum in Support of Motion for Discovery," 2 *Claiborne, supra* at 279-280; see also Respondent's argument in support of this motion during the debate thereon. 2 *Claiborne, supra* at 104.

[5] "Opposition to Motion for Discovery," 2 *Claiborne, supra* at 457-459; see also Rep. Kindness' argument in opposition to the discovery motion during the debate thereon. 2 *Claiborne, supra* at 104-106.

[6] 2 *Claiborne, supra* at 115-116.

[7] Reply of the House Managers, *supra*, at 11.

[8] For example, Respondent never requested the working materials from the Eleventh Circuit Investigating Committee investigating the bribery and perjury charges, nor did he ever petition the court or the House of Representatives for the grand jury materials in the bribery conspiracy case.

EXHIBIT 6

Finally, the House of Representatives proposes two procedures that would narrow the issues in dispute and, therefore, would expedite the presentation of the evidence at trial. First, the House asks the Senate to adopt a rule that would hold that any proposed stipulation of fact filed with the Senate by a party to this proceeding will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation of fact should not be taken as true.

Second, the House asks the Senate to adopt a parallel rule addressing the authenticity of documents, which would establish that any proposed stipulation regarding the admissibility of a document filed with the Senate by a party to this proceeding will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation should not be taken as true.

By adopting the above proposed procedures, the Senate would ensure a timely and just resolution of the pending impeachment proceeding.

EXHIBIT 7

First: The managers have submitted a last-minute proposal to further dilute the protections traditionally accorded the accused in the trial of an impeachment. Their staff has prepared voluminous proposed stipulations drawn from the Statement of Information their staff prepared before the House conducted its hearings. The managers now suggest that the burden be shifted to Judge Hastings, before the trial begins, to show what basis he has to refute their staff's claims. That will not do.

The House had its opportunity to formulate the accusations in such detail as it chose in the Articles of Impeachment. Judge Hastings has responded. The managers have replied. The facts in dispute are now defined. The managers must now recognize that they, not their staff, must carry the full burden the House assumed. They must make good the accusations by presenting competent testimony and other evidence. When they rest, then and only then may Judge Hastings be called upon to decide whether and what competent evidence should be produced in his defense.

That was the burden the prosecutors assumed the last time these accusations were tried. That is the procedure that was followed. Debi McMullen and eleven other citizens became constitutional officers and took an oath to do impartial justice there. They did. The House has already enjoyed unprecedented advantage in conducting a reinvestigation. The suggestion that they should be permitted to avoid their responsibility and dilute the accused's rights further is wrong.

If there is to be a trial, the managers must again assume the burdens the prosecutors assumed in 1983, the burden that managers for the House have assumed in trials of impeachment throughout history. If there is to be a trial, Judge Hastings must be accorded at least those protections that he was accorded in 1983 and the protections that have been accorded the accused in trials of impeachment throughout history. If there is to be a trial, the Senators must execute their oaths as fully as did Debi McMullen and her fellow jurors in 1983 and as fully as have Senators in trials of impeachment throughout history.

ORGANIZATIONAL MEETING

FRIDAY, MARCH 17, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee convened, pursuant to notice, at 8:37 a.m., in Room SR-301, Russell Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Leahy, Pryor, Bingaman, Bryan, Kerrey, Lieberman, Specter, Rudman, Bond, Gorton, and Burns.

Staff present: Michael Davidson (Senate legal counsel), Morgan Frankel (assistant Senate legal counsel), and John L. Sousa (chief counsel, Committee on Rules and Administration).

Senator **LEAHY**. The committee will come to order.

This is the Senate Impeachment Trial Committee. We are meeting for the purpose of an organizational meeting.

The majority and minority leaders have appointed the members. We are meeting for the purpose of the nomination and election of a chairman and nomination and election of a vice chairman, and then whatever additional organizational matters the chairman and vice chairman deem necessary.

As the senior member here, I would move the nomination of Senator Bingaman of New Mexico to be chairman; and then if he is elected, it would be up to him to nominate a vice chairman. So I hereby nominate Senator Bingaman as chairman.

Senator **RUDMAN**. I second that nomination.

Senator **LEAHY**. The nomination has been moved and seconded. Is there any discussion?

[No response.]

Senator **LEAHY**. Are there other nominations?

[No response.]

Senator **LEAHY**. Hearing none, all those in favor of the election of Senator Bingaman, signify by saying aye.

[A chorus of ayes.]

Senator **LEAHY**. Opposed, no.

[No response.]

Senator **LEAHY**. The ayes have it.

Jeff, it is yours.

[Whereupon, Senator Bingaman assumed the Chair.]

Chairman **BINGAMAN**. I appreciate that vote of confidence.

Senator **LEAHY**. We all realize the chairman is the one person who has to be at all the meetings.

Chairman **BINGAMAN**. Right. I have been spoken to by the majority leader, and I graciously accept.

The nominations are open for vice chairman. Is there someone who wishes to make that nomination from the Republican side?

Senator BURNS. Mr. Chairman, I would move that Arlen Specter serve as vice chairman.

Chairman BINGAMAN. Is there a second?

Senator LEAHY. I would second the nomination.

Chairman BINGAMAN. All in favor, signify by saying aye.

Senator RUDMAN. Don't we get to discuss that?

Chairman BINGAMAN. There is an opportunity to discuss.

Senator LEAHY. We don't dare take a chance.

Chairman BINGAMAN. All right. All in favor signify by saying aye.

[A chorus of ayes.]

Chairman BINGAMAN. Opposed, no.

[No response.]

Chairman BINGAMAN. The ayes have it. Congratulations, Senator Specter.

Vice Chairman SPECTER. I thank my colleagues for this display of confidence. This electoral process makes the Soviet system look like pure democracy. [Laughter.]

Chairman BINGAMAN. I understand the other business we have today is to get a description from the Senate legal counsel, Mike Davidson, about the status of the pre-trial proceedings and how the case comes to us, since it was referred to this committee just pursuant to that resolution that was passed yesterday evening.

So, Mike, please go ahead and tell us what you can about the status of this thing.

Mr. DAVIDSON. Yes, let me seek to do it as briefly as possible.

We have placed before each member a binder that contains material that has been submitted by the parties prior to the creation of the committee, setting forth the views of the parties on various pre-trial matters.

This proceeding begins at a different point than the proceedings in the Claiborne impeachment, because the parties have already taken positions, have been requested to take positions by the Senate on various matters which they believe should be resolved prior to the commencement of evidentiary hearings.

The Senate, in September of last year, agreed to Senate Resolution 480, which is the first document in the binder. Section 3 of that resolution directed the parties to be prepared by March 1 of this year, or as soon after as the Senate determines that testimony should be heard, in a forum designated by the Senate, which is now this committee, to be prepared to present its evidence.

That schedule, of course, has moved somewhat in order to hear and determine motions to dismiss the Articles of Impeachment.

Section 4 requested the parties to work together to stipulate to evidentiary matters, including documents, and to jointly report by February 21st to the Senate on the status of those stipulations. That was a holiday. The report was filed on February 21st. The parties were unable to agree. That is the next-to-last document, Tab 11.

The House submitted a separate statement, Number 12—and we then reorganized it in this binder so that it is all chronological—the proposed stipulations of the House as to facts which the House believes are not in controversy; proposed stipulations on documents. Those are matters that the House would wish to pursue. And you will see as you study this—and I am not suggesting a complete review of this binder now—but the House also proposes a procedure by which Judge Hastings' counsel would be called upon to either admit these stipulations as true, or to explain why they are not.

Judge Hastings also has pre-trial requests relating in large part to the production of documents. I simply wanted to bring that to the attention of the committee so that when the committee next meets, it would know what the positions of the parties are on those several matters.

Chairman BINGAMAN. Are there questions to Mike about the pre-trial status of this?

Senator RUDMAN. Yes, I have a question.

Chairman BINGAMAN. Senator Rudman.

Senator RUDMAN. Mike, what is the nature of the dispute on the pre-trial production of documents?

Mr. DAVIDSON. Well, I don't know if I can do justice to the parties in responding to that. The House has asserted a willingness to provide documents with respect to any witness it proposes to call, if the witness' testimony has been transcribed, for example, or has been acknowledged in some piece of writing. Judge Hastings has asked for a broader discovery of material that had been provided to the House by the Judicial Council and the Judicial Conference. So there is a question about the dimensions of the production that may not have been made and which Judge Hastings believes he needs prior to the commencement of an evidentiary hearing.

And I think it is Judge Hastings' view that prior to further production it would be difficult for him to stipulate as to any matters not in dispute.

The House is concerned that there is no precedent for the Senate directing the other body to produce its own files in an impeachment and that impeachments have moved, I think, more rapidly to evidentiary hearings.

Senator RUDMAN. Let me follow up on that, then. Is that essentially an attempt to join that issue in some way covered under Tab 8 here, which is the motion by the House Managers to exclude irrelevant evidence?

Mr. DAVIDSON. That is actually another issue, although of some relationship, because it would affect the scope of any pre-trial discovery. As in Claiborne, there is a question—and again, I hope I do the parties justice—of whether part of this inquiry should be an inquiry into the investigations of the impeached official both by the Judiciary and by the Department of Justice. And the House is seeking to obtain an early determination by the committee that that would not be relevant. Of course, if the committee were inclined to determine that, that would reduce any documentary disputes to a smaller degree.

Senator RUDMAN. Thank you.

Chairman BINGAMAN. Are there any other questions of the Senate legal counsel at this point?

[Pause.]

Chairman **Bingaman**. My understanding is that next, your thought, Mike, was that we should take some action to authorize the chairman in consultation with the vice chairman to schedule a meeting of this committee during the week of April 10th to hear from the parties on motions and suggestions they have on these pre-trial issues; is that correct?

Mr. **Davidson**. Yes.

Chairman **Bingaman**. Could we get a motion to that effect?

Senator **Gorton**. So moved.

Senator **Leahy**. Second.

Chairman **Bingaman**. All in favor signify by saying aye.

[A chorus of ayes.]

Chairman **Bingaman**. Opposed, no.

[No response.]

Chairman **Bingaman**. All right. Then, the Vice Chairman and myself will get together and find a time that we could have a hearing—or, not a hearing, but a meeting to allow the counsel for the two parties to come forward and make their positions known about scheduling and about motions.

I gather that part of what we are talking about is establishing a schedule to receive any written submissions of the parties in advance of us meeting on the week of the 10th.

At the committee meeting during the week of the 10th, we will expect the parties to be prepared to discuss with the committee the schedule of hearings, and in settling on that schedule of hearings, I think we need to keep in mind this resolution which has already been passed last fall, Resolution 480, which directed the parties to be prepared to present their witnesses on the 1st of March of this year. So I think that is a factor we need to keep in mind.

We will have some additional discussions with the Rules Committee staff to see what help we can receive from them in making facilities available and staff available to help the committee in its actions. I do not know what else will come up, but we will consult and figure out what needs to be done between now and the week of the 10th of April.

Is there any other business that anyone wants to raise? Arlen, did you have something we should go into?

Vice Chairman **Specter**. No, Mr. Chairman. I think that fairly well states it for organizational purposes. It is obviously a complex matter, and I know the committee will want to structure rules to move through the process as expeditiously as possible to give both sides a fair hearing and come to a prompt conclusion.

Chairman **Bingaman**. All right. Anything further?

Senator **Rudman**. Mr. Chairman.

Chairman **Bingaman**. Senator Rudman.

Senator **Rudman**. Mr. Chairman, David Pryor and I, I think, are the only people who served on the previous——

Chairman **Bingaman**. The three of us did.

Senator **Rudman**. Yes, that's right. And I was just going to say that we ought to look very closely at those rules, because we spent a lot of time, and Senate legal counsel did a terrific job in helping us to put those rules together on the Claiborne hearing, which really would help us a great deal. I hope we would be able to draw on those to a large extent, because they were very carefully worked out. It was the first modern-day impeachment, so we really had to develop these.

Secondly, I want to talk about our own schedules here. I have got to tell you that I don't do this with any—I was not a volunteer, let's put it that way—I don't suppose anybody was——

Senator LEAHY. There weren't too many.

Senator RUDMAN. I have some—as we all do—some hearings in the next three or four months on the Appropriations committee that are absolutely vital. I just cannot miss those hearings; they are too important. I do not know how we are going to schedule this thing. We talked about that last time. It was a different time of year the previous time, and it was a little easier in some ways. But I am just wondering what our schedule is going to be like because although there is no requirement that everybody on the committee be here to hear all the evidence, nonetheless I always felt a little uneasy about missing some of the evidence and then voting, being on the committee.

So I would hope we might be able to counsel with each other on how we are going to do that. For instance, Appropriations hearings normally start every morning at 9:30 and go on at least for a couple of hours, and everybody else here has other committees which they are involved in, some of which people chair or are ranking member.

I looked some of this material over last night, and I can see a longer trial than we had in the matter of Claiborne, and I think everybody ought to be prepared for it, but we had better schedule it so we do not just totally foul up our own schedules.

That is all I wanted to say. I am sure David Pryor would share that view, having been through the other one.

Senator PRYOR. Mr. Chairman, if I may respond.

Chairman BINGAMAN. Senator Pryor.

Senator PRYOR. Mr. Chairman, I did not have a chance to look at the material last night, but I have the same problem. I do not know when we are going to do this, and I think that informally sometime, we might get together and kind of look at the next two or three months—and I hate to even suggest this—I think we may get to the point where we have to have night sessions.

Senator RUDMAN. I think you are right.

Senator PRYOR. I do not see a point in the day when we can take prime time, our prime time that we are dealing with other matters, and I would like to just lay it on the table that we may want to consider some night sessions beginning, say, at 6:00.

Senator BRYAN. For those of us who were not privileged to serve on the most recent impeachment hearing, how long did that take? What kind of time frame?

Senator PRYOR. Years, it seemed. [Laughter.]

Senator RUDMAN. Mike, how long were we actually in hearing?

Mr. DAVIDSON. The better part of two weeks. But the estimates that the parties offered to the Rules Committee, the [House] managers indicated that they might need 12 to 15 full hearing days. And Judge Hastings' counsel thought that if that was the case, they might need an equivalent time.

Of course, if there were procedures to determine the authenticity of documents in advance, to determine whether there are facts that are not genuinely in dispute, that might help to sharpen the issues that needed to be heard and presented in this forum with all members.

Vice Chairman SPECTER. Is there any real question about authenticity of documents?

Mr. DAVIDSON. I should not comment on that. There was a proposal by the House; it has not been accepted by Judge Hastings' counsel, and I think I would defer to his expression of the difficulties that they now have in acknowledging authenticity of documents.

Chairman BINGAMAN. Senator Bryan?

Senator BRYAN. Mr. Chairman, would it be appropriate for the chairman and the ranking member to meet with the parties at some time to see if we could at least develop a protocol, to see if we could extract stipulations from the parties that might help to expedite the process, much as a judge does in a pre-trial conference? That could save us a lot of time if you think that would be fruitful. I would defer to the judgment of those of you who have been on the previous hearings, but there is no reason why we shouldn't try that, it seems to me.

Chairman BINGAMAN. Mike, in your view, should such an effort be made by Senator Specter and myself before this meeting of the committee with counsel the week of the 10th, or should we have that meeting first?

Mr. DAVIDSON. I think there could very well be benefit in a preliminary session, knowing that there will be a meeting the week of the 10th and that it has been difficult to date to obtain agreement, that some effort be made to determine whether there can be an airing of issues. And certainly, at that meeting, one of the issues that the committee might consider is whether, for whatever limited pre-trial work that needs to be done, whether that can be delegated to a smaller group of members of the committee such as the chairman and the vice chairman.

Chairman BINGAMAN. Why don't we explore the possibility—unless there is any objection from the committee—explore the possibility of Senator Specter and myself having a meeting prior to the next meeting of the committee, which would be that week of the 10th, with counsel——

Senator BRYAN. Do we need a motion, Mr. Chairman?

Chairman BINGAMAN. I don't believe we need a motion on that unless there is some objection.

Why don't we go ahead on that basis, then. Mike, you can set that up, if you would, at a time that is convenient to Senator Specter's time and mine.

Senator RUDMAN. Mr. Chairman, it is very important, because the sooner we can rule on the scope of what we are going to be doing, the sooner we are going to know what we are facing. It is important that we do that. And I think you and Senator Specter should do whatever you'd like to do, as far as this Senator is concerned, and get as much as you want done, and then we can get to the point of ruling on scope, because there are a lot of things in here that, if we decide them one way, it could be 12, 15 weeks, 40 days of hearings, and decided another way, it would be maybe 20 days. That obviously cannot be a consideration on how we decide, but it is a consideration as to how long it is going to go.

So I would hope that we could get at that early.

Senator PRYOR. Mr. Chairman, what rules—and you may have discussed this; I am sorry I was late—have we decided on as to how we are going to—Mike, you will be our counsel. Will we have privileges of staff, and will we have some executive sessions as we did in Claiborne, and who will be allowed—how do we do this? Have we talked about that?

Mr. DAVIDSON. Well, the chairman and vice chairman and I have yet to have a discussion. We need to have a discussion about the kind of resources that my office could provide and whatever other assistance you might like to have. We will provide everything that the committee would like to have from us. But we did not have a chance to have that discussion last evening.

One rule that the committee did agree to during the Claiborne proceeding was that at any time the committee was meeting, a natural quorum would be required. That is, for the purposes of receiving testimony, the committee insisted upon the presence of 7 of the 12 members; and in fact, for many of those days, all 12 were present except for brief, unavoidable times when they had to be somewhere else.

The thought there was that as the full Senate had delegated this task to the committee, it fell to the committee to hear the testimony as a group.

Chairman BINGAMAN. Yes, Senator Kerrey?

Senator KERREY. Mr. Chairman, can someone who has had previous experience—perhaps yourself—tell me what is the purpose of this committee, and what assumptions cause us to conclude that the committee can do the work better than the full Senate, and is there a moment where we may conclude, in fact, that those assumptions are no longer valid?

Chairman BINGAMAN. Let me call on the Senate counsel to describe that as precisely as he can.

Mr. DAVIDSON. Starting in the early part of this century, the Senate periodically struggled with the question of how it could manage full evidentiary hearings on the floor of the Senate. And it had experiences through the 1930's in which, although evidentiary hearings were held on the floor, attendance was strikingly sparse—two, three, five members might be in attendance, and not the same people all the time. So they agreed in the mid-1930's to create this authority for the appointment of a committee, which was first utilized two and a half years ago in the Claiborne matter.

The committee is not to make recommendations on guilt or innocence. The Senate was quite clear that although, of course, individual members would speak during deliberations, the weight of a committee recommendation would not begin to affect the deliberations on the floor.

The committee's function is to establish rules for a coherent presentation of the evidence—parameters such as what is relevant and what is not relevant—and to do that consistently with the attendance of the same group of people so that that record is a coherent record for the Senate.

The Senate has asked the committee to do one other thing in this impeachment; that is, without making a recommendation, to submit to the Senate a statement of uncontested facts after you hear all the evidence and determine whether there are facts that are truly not in dispute; and then to provide a neutral summary of contested issues to assist the Senate in looking at what will be a very large record.

So those several matters—consistent rulings on the scope and admissibility of evidence, and understanding of the evidence so that as a body you can report that evidence in a usable form to the Senate.

Senator KERREY. I hear two things that you are saying that we are supposed to do. One is to develop rules for the full Senate's use, and two, to develop a list of uncontested evidence.

Mr. DAVIDSON. The second part would also include a statement of the evidence that is contested, but put side-by-side so that the Senate, as a body, will know where to turn to see the disagreements. And on the first, there will be any number of issues as to what the scope of this inquiry should be and to rule on those.

Senator KERREY. Understand what I am trying to do is get to a point where I can get some sort of sense myself of how much do I need to hear in order to do the work that I have been charged to do. Do I need to hear all the evidence in order to develop a list of rules under which the Senate will proceed, and do I need to hear all of the evidence in order to determine which evidence is uncontested?

Senator RUDMAN. Well, Mike, if you would yield——

Mr. DAVIDSON. Yes.

Senator RUDMAN. Let me give you another slightly different perspective—our legal counsel's historical perspective is right—but from a member who sat there. I think it is a little bit more than that, Mike, in terms of what the Senate is looking for.

We do operate the committee system here. I mean, we rely heavily on committees. Rarely do we overturn committees. But in this case, the Senate cannot sit and hear, examine, assess each of these witnesses. We are going to do that. We are going to listen to a lot of testimony. Then when we get to the floor, it is an unusual procedure, because normally on the floor in a classic impeachment of a President or whatever, you would have the trial taking place on the floor. But the Senate, other than this group, is not going to hear these witnesses. They are going to hear arguments in the nature of jury arguments by the House as prosecutors and by Judge Hastings' defense counsel.

What we do is we have heard all the evidence; we write a report, which does not reach a conclusion, but we can give weight to evidence. And as this debate goes on, the Senate will turn to this panel of 12 people, who were picked because they are going to be fair, and they are going to attend and listen and assess the evidence, and the Senate is going to say, "Well, Senator Kerrey, this is what they say. You heard the evidence—what did you think?" And we get into some really involved debate on the floor, as David Pryor will remember, on that matter when we finally get into deliberations. I believe they were in closed session, were they not; the deliberations are in closed session.

So that, I think, is a dimension of this which goes beyond a little bit—what Mike is saying is absolutely correct, but it is a very important function of this committee for everyone here to absorb this evidence and decide, when it comes to the floor as a jury argument, what you are going to say about it.

Chairman **BINGAMAN**. Let me also just clarify what I think might be a confusion. We do not set rules that determine how the Senate proceeds. We rule on the issues that are presented to us as though we were sitting as the Senate, so that we decide what motions to grant and what motions not to grant, but once we make our record available to the Senate—and of course, the Senate is free to pursue whatever action it feels appropriate, including calling witnesses—if the Senate determines at that point that they want to call one or more witnesses in spite of the fact that they may have a transcript of their testimony and have had them presented to the committee; the Senate has full authority to do anything it wants once we make our report to it.

Is that accurate?

Mr. **DAVIDSON**. That is correct, Mr. Chairman.

Senator **LEAHY**. Mr. Chairman, if I could follow up on that, in the event—possibly unlikely in this case—but in the event that we reached a point where we really could not reach a conclusion on a particular disputed fact, there is nothing that precludes us from taking the same evidence or whatever it is and asking the Senate to consider it as a whole; is that correct?

Chairman **BINGAMAN**. I will defer to counsel on that.

Mr. **DAVIDSON**. The rule specifically preserves for the Senate the right to call any witnesses or to have the entire trial conducted in the full Senate——

Senator **LEAHY**. In fact, they could even ignore us if they wanted to. I mean, we could come in and say, "This is what we found," and they could say, "Fine; we want to do it all over again." It is not likely to happen, but that is within the parameters.

Mr. **DAVIDSON**. You could determine that a certain line of inquiry is irrelevant. And the Senate, when it receives the report of the evidence, could decide that in fact it is relevant, and could either send the matter back to the committee or have that line pursued on the floor of the Senate.

Chairman **BINGAMAN**. Senator Kerrey, did you have another question?

Senator **KERREY**. Just one more question as to the confidentiality of evidence presented. I see there is a camera rolling here, and I do not know who all these folks are and what sort of requirements there are on disclosure of things that we will hear. Are there any such guidelines under which we should operate?

Chairman **BINGAMAN**. Well, I think we establish those guidelines as we proceed. As I understand it, everything is open unless we go into closed session, and this is obviously an open session.

Senator Lieberman?

Senator **LIEBERMAN**. Mr. Chairman, another preliminary question. Obviously, this is the first time I have done anything like this. Following up on Senator Rudman's comment, understanding that the narrowly-defined role that we have is to present the evidence to the Senate as described by counsel, nonetheless, I think what

Senator Rudman says makes a lot of sense, which is that our colleagues are going to turn to us—let's put it this way. We are going to want to participate more actively in the debate on the Senate floor, having sat here and heard all this evidence.

I would raise this question which I would like a little help on before we proceed, which is what are the standards that we—I—let me make it personal—should have in mind as I hear this evidence. Now, implicit in the debate on the motions to dismiss was the differentiation between this proceeding and a so-called normal criminal proceeding. So I presume, and one of the arguments made repeatedly here was that Judge Hastings might have been acquitted in a criminal proceeding and yet possibly still be convicted here, because the standards are different.

It would be of help to me, either in writing or if it makes sense, in some oral presentation, for me to understand what you might call the common law of impeachment, American impeachment—and I understand there have been very few cases over our history—but what it suggests to us about what threshold the evidence has to cross for us to make a judgment of guilt or innocence against this judge.

Senator RUDMAN. I don't think you are going to find one, Joe. I think it is going to be whatever you apply to it. We looked through that last time, and you are not going to find it. It is what is in the mind of every Senator. If you want to use clear and convincing, preponderance, if you want to use beyond a reasonable doubt—I think it is what everybody decides themselves. And you are quite right, what happens on the floor is some members of this committee will become defenders, possibly, of Judge Hastings in that closed session, and others will think that he is guilty. That is how this will finally come out, in my opinion. That is what happened the last time in that closed session. Records are sealed, but there was great debate among members of the committee as to what they heard, you recall.

Senator LIEBERMAN. Is there no guidance—do I recall that 12 or 13 impeachment trials have occurred in our history—is there no guidance that comes from that? In other words, during the proceedings on the motions to dismiss, there were statements along the line that what we have to determine is whether he has breached the public trust, whether his actions have been an offense to the Constitution, as one of our colleagues said. That is a long way from clear and convincing evidence or beyond a reasonable doubt or whatever other standards might be applied in other proceedings.

Chairman BINGAMAN. Let me ask Senate Counsel to say anything he would like at this point, and maybe we need to set aside some of the time at the April meeting to get into this.

Mr. DAVIDSON. During the Claiborne proceedings, Judge Claiborne moved to have the Senate establish a standard of evidence, moved to have established the standard of truth beyond a reasonable doubt. And that was debated. It was considered initially in committee, which had no jurisdiction to even attempt to bind the Senate, but then considered in the full Senate; and the Senate determined overwhelmingly, as Senator Rudman indicated, that each member, as on any vote in the Senate, needs to establish his or her standards for that vote. The Senate has never presumed to instruct its members what quality of evidence, or what historical basis each member must have in order to determine that vote.

On the other hand, it is undoubtedly illuminating to look at prior impeachments to know how people have struggled through those issues, recognizing that debates have been closed. But I think it probably would be a useful thing during the course of these proceedings to have historical materials available to members of the committee, and then ultimately to members of the Senate, so they might see how these debates have been conducted, resolving these matters each in a very personal way.

Senator **Lieberman**. Mr. Chairman, if I may, that is really all that I would be looking for. I understand that there is not much more I can find, in other words, that I cannot go and look at opinions that have been written on these matters. So I guess what we are talking about, really, is either floor debate during the deliberations, or perhaps academic commentary by outside observers on what the situation may be.

Thank you.

Chairman **Bingaman**. Are there other questions or comments or issues that should be discussed this morning?

Senator **Pryor**. Mr. Chairman, I would like to just say this—and please do not take this as an admonishment, because I am not an admonisher—but going back three years to Claiborne, one of the temptations, I think, that so many of the members of the committee had—I don't even want to say a temptation—but we did not know quite who we were or what our charge was, and finally, I think it came down to kind of the "Lou Holtz Do-Right Rule", Warren, you know, you kind of come down to that—at least for some.

Now, there was a great temptation every day after those hearings, especially the closed hearings, when several members of the press—the press, by the way, was not titillated by the whole Claiborne issue—but there were some assigned, and as you would walk out the door, they would try to grab you and try to get some comment.

I think—and I do not want to propose a rule—but I usually think in a case like this, where we don't know whether we are sitting on a jury, or whether we are the grand jury, or whether we are the finders of fact, or whether we will ultimately make recommendations to our colleagues, but it sure does uncomplicate things if someone in the press asks you a question about any part of this to yield to either the chairman or the vice chairman and say, "I'm not going to say anything. If you want to know something, you go to the chairman or the vice chairman." That is generally the rule that we have used in the Senate Ethics Committee.

Senator **Leahy**. We use it in Intelligence, too.

Senator **Pryor**. I have been on that for eight years, and I think generally, it is just kind of a custom, and I think it has worked well.

Senator **Rudman**. And David—that is exactly right—you may recall in Claiborne, the chairman and vice chairman, their rule was they would only answer procedural questions from the press, if they wanted to know what was going on with this—but never anything about the merits. That is what they did.

Senator **Pryor**. Right.

Senator **Leahy**. To make life a lot easier for everybody else, why don't we just adopt that as a rule, if it is a closed meeting? Or, we don't need a rule, but just an understanding.

Senator **Pryor**. I don't propose it as a rule; I propose it as a possible way of conducting this kind of thing.

Chairman **Bingaman**. I certainly would not favor adopting a rule on that issue. I think every Senator has a right to do what he wants. But I think the point particularly about not commenting on the merits of the case until we have had the full case presented to us is an excellent one to just keep from having to backtrack. If you have one point of view, and then the next day after hearing somebody else, you have another point of view, it is a lot easier not to have commented at the end of the first day's hearing.

Yes, Senator Burns?

Senator **Burns**. Mr. Chairman, I just have a comment here, and I want to echo what Senator Kerrey said and direct this to Senator Pryor.

It seems like we are all going to wrestle, especially those of us who have not been trained in the legal profession, as to are we cast in a role as defendant or prosecutor or jury; are we legislative and judicial. I think there are going to be a lot of us who are going to wrestle with some of those questions, and I appreciate, especially as to handling of the press, that that should all be referred to the leadership of this committee. I think it will make it a lot easier for a lot of us, because we are going to have to wrestle with a sense of direction and what role we play in this.

So I compliment Senator Pryor on that, and as this thing unfolds, it will be a learning process for me.

Thank you very much. It is just going to cast us into a lot of different roles, I think.

Chairman **Bingaman**. I think it will be a learning process for all of us.

Is there any other issue that we want to discuss before we adjourn?

[No response.]

Chairman **Bingaman**. If not, we will adjourn and then, when Senator Specter and I can schedule another meeting, we will advise folks.

Thank you.

[Whereupon, at 9:16 a.m., the committee was adjourned, subject to the call of the Chair.]

MICHAEL DAVIDSON
COUNSEL
KEN U. BENJAMIN, JR.
MORGAN J. FRANKEL
ASSISTANT COUNSEL

PHONE: 202-224-4435
TELECOPIER: (202) 224-3391

United States Senate
OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, DC 20510-7250

March 24, 1989

The Honorable John Bryant
The United States House of Representatives
Washington, D.C. 20515

Professor Terence J. Anderson
The University of Miami School of Law
P.O. Box 248087
Coral Gables, Florida 33214

Dear Representative Bryant and Professor Anderson:

As you are aware, at its organizational meeting on March 17, the committee appointed under Impeachment Rule XI determined that it would meet with representatives of the parties during the week of April 10 to consider matters that should be addressed prior to hearing the testimony of witnesses. In order to make the committee's meeting that week as productive as possible, the chairman and vice chairman will meet with you on April 4 to review the status of outstanding issues in light of your prior submissions and the memoranda that each side should submit by March 31.

A review of the parties' prior submissions indicates that the following matters should be considered in your March 31 filings:

1. The Parties' Witness Lists

The House provided to the Committee on Rules and Administration, at the committee's request, a provisional list of 23 witnesses with a brief general description of the nature of the anticipated testimony of each witness. Subsequently, the House supplemented its list by adding six more names. Before the Rules Committee, Judge Hastings declined to provide a list of his witnesses, initially on the ground that the House should first be required to list its witnesses. Subsequently, he referred the Rules Committee to a provisional list that he had presented earlier to the House, and stated that he has "identified more than 200 witnesses who may have information that is relevant...." One question for Judge Hastings' side is whether he is now prepared to provide a provisional list and description of anticipated testimony so that the committee may have a firm basis for scheduling its hearings and acting on several pretrial matters, including the motion of the House in limine to exclude evidence.

2. The Motion of the House In Limine to Exclude Irrelevant Evidence

The House has moved to exclude evidence offered to prove motivations of persons who investigated and prosecuted Judge Hastings, the motivations of persons involved in the Judicial Branch investigations of Judge Hastings, and cumulative evidence on his general character and reputation. A response from Judge Hastings to the motion is needed.

3. Dredge

Judge Hastings has indicated an interest in calling William Dredge as a witness as part of a "rainmaking" defense. House counsel has offered to contact the F.B.I. for assistance in locating Dredge and obtaining his presence. Judge Hastings' witness list will indicate whether he proposes to call Dredge. If Dredge is on the list, can we confirm that the House will assist in obtaining Dredge's presence? Judge Hastings states that the testimony of an additional three to five witnesses would be required if Dredge testifies. Who are they?

4. Borders

Judge Hastings states that "William Borders is a central witness.. If he agreed to and did testify truthfully, his testimony would fully exonerate the judge." Borders has previously asserted his privilege against self-incrimination. If Borders is on Judge Hastings' witness list, should the committee commence a proceeding leading to a grant of immunity? If immunity is granted, should it be determined early in the proceedings whether Borders will testify with immunity and, if he will not, should enforcement proceedings be authorized at an early date?

5. Judge Hastings' Discovery Request

Judge Hastings has requested extensive discovery. The House has responded by describing the nature of the documents that it would provide: materials that the House intends to use at trial; statements of witnesses to be called at trial that have been sworn, adopted, or approved by them; transcribed statements of witnesses who will be called at trial; and any exculpatory evidence. The House is asking for reciprocal discovery. What is Judge Hastings' response to the House's offer and request? In helping the committee to understand the parameters of the discovery issue, could the House describe the nature of the materials that were made available to it by the Judicial Branch and the Department of Justice? In conjunction with this request, it will be helpful for the parties to address any questions which should be considered in relation to grand jury material to which the House has been granted access.

6. Stipulations of Documents and Facts

The House, at the request of the Senate, has proposed stipulations concerning documents and stipulations of fact. Judge Hastings has declined to date to enter into stipulations. The House has proposed that the Senate adopt procedures by which stipulations of fact filed with the Senate would be accepted as true unless the opposing party files a written objection including a proffer as to why the proposed stipulation of fact should not be taken as true. The House suggests that a similar procedure be adopted concerning documents. What is Judge Hastings' response to those proposals? To help the committee understand the promises and the difficulties of the stipulation process, I would like to suggest that each party select, for illustrative purposes, ten of the proposed stipulations and an equal number of documents and be prepared to discuss the procedures that would be best suited to resolving any disputes about them.

7. House Depositions After Commencement of Senate Proceedings

Judge Hastings has objected to the use of the House's subpoena power to compel testimony after the exhibition of the articles of impeachment. The House should respond to that objection.

8. Rules of Evidence

Judge Hastings has filed a memorandum on rules of evidence. What is the response of the House, and can the parties now identify any significant evidentiary questions that the committee will need to resolve?

* * * *

This list is not intended to exclude the discussion of other evidentiary questions that either side believes should be addressed at this time. Pending the organization of the committee's administrative staff, please transmit to my office your communications to the committee, including your March 31 filings.

Sincerely,

Michael Davidson

Michael Davidson

PRETRIAL FILINGS IN PREPARATION FOR THE APRIL 12, 1989, MEETING TO HEAR PRETRIAL ARGUMENT

V. PARTIES' RESPONSE TO SENATE LEGAL COUNSEL'S LETTER OF MARCH 24, 1989

IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

REPORT AND RECOMMENDATIONS OF THE HOUSE MANAGERS ON PENDING PRE-TRIAL MATTERS

On August 3, 1988, the House of Representatives presented to the Senate 17 Articles of Impeachment against United States District Judge Alcee L. Hastings. Since that time, in response to directives from the Senate Committee on Rules and Administration dated August 10, September 8, and December 12, 1988, the parties have had several opportunities to address issues which should be resolved pre-trial in order to facilitate the trial of this impeachment. The following is a summary of the issues raised by the parties, the position of the House Managers with regard to each of those issues, and the recommendation of the House Managers of an appropriate mechanism to resolve each issue.

1. **RULES OF EVIDENCE**. In a memorandum submitted to the Senate Rules Committee on September 6, 1988, Judge Hastings requested clarification on the application of rules of evidence in this impeachment trial. Respondent stated that either the common-law rules or the Federal Rules of Evidence would be appropriate and suggested that the Federal Rules of Evidence offered the advantage of providing a comprehensive and readily accessible body of materials.[1]

(a) Position of the House Managers.

The House Managers believe that the guiding principle for making determinations about the admissibility of evidence should be the relevancy of the proffered evidence to the charges in the Articles of Impeachment. Once relevancy is established, the Committee should then be flexible in its willingness to admit evidence into the record. Many of the rules of evidence that tend to exclude evidence are intended to prevent a lay jury from giving undue weight to unreliable evidence, a factor not applicable in a Senate trial.[2] Moreover, because the Committee is charged with the responsibility of preparing a record for the full Senate to review, the Committee should err on the side of admitting rather than excluding relevant evidence, for it will be easier for the Senate to disregard evidence which that Body feels was wrongfully admitted than to attempt to remedy an inappropriate exclusion of evidence. With these caveats in mind, the House Managers agree that the Federal Rules of Evidence are a useful touchstone to which the Committee should look for guidance in the conduct of the impeachment trial of Respondent.

---

[1] See Memorandum on Behalf of United States District Judge Alcee L. Hastings Concerning the Need for a Clear Statement that the Rules of Evidence Will Be Properly Applied and Proper Discovery Ordered at 6, reprinted in S. Rep. No. 542, 100th Cong., 2d Sess. 106 (1988) (hereinafter "S. Rep. 100-542").

In addition, it should be noted that it is unlikely that the distinction between the common law rules and the Federal Rules of Evidence will make any practical difference in the admissibility of evidence in this trial. The House Managers know of no significant evidence which would be affected by the selection of either set of rules as the preferred source of guidance in making evidentiary rulings.

(b) Recommendation.

The House Managers believe that this matter is ready to be resolved without further briefing by the parties and recommend that it be discussed at the April 4, 1989 meeting with the Chairman and Vice-Chair, and resolved at the meeting of the Committee during the week of April 10, 1989.

2. **DISCOVERY**. In his September 6th memorandum to the Senate Rules Committee, Judge Hastings also raised the question of discovery.[3] His position was developed in Respondent's First Request for Production of Documents and Other Tangible Material filed December 28, 1988. In that request, Respondent asked the House of Representatives to deliver to his counsel copies of all documents relating to the matters alleged in the Articles of Impeachment or the Answer to the Articles of Impeachment, which fall into the following six categories: 1) all documents received by the House of Representatives from the Judicial Conference of the United States or the Judicial Council of the Eleventh Circuit pertaining to the judiciary's investigations of these matters; 2) all documents and other materials, including rough notes,

---

[2] S. Comm. on Rules and Admin., 93rd Cong., 2d Sess., Impeachment, 245-250 (Comm. Print 1974) (Professor Stephen R. Goldstein).

[3] *See* Memorandum on Behalf of United States District Judge Alcee L. Hastings Concerning the Need for a Clear Statement that the Rules of Evidence Will Be Properly Applied and Proper Discovery Ordered at 7, *reprinted in* S. Rep. 100-542 at 107.

interview notes, memoranda, and transcriptions, which reflect statements by any person who could testify concerning these matters; 3) documents and other materials gathered by or submitted to grand juries in connection with inquiries into conduct of Judge Hastings which is the subject of the Articles of Impeachment; 4) all documents and other materials obtained by the House of Representatives from the Department of Justice or other Executive Branch sources, including the FBI and the Bureau of Alcohol, Tobacco, and Firearms; 5) all documents or materials gathered by the House of Representatives and its agents concerning these matters; and 6) all documents which are material to Judge Hastings' defense, are exculpatory, or which may lead to exculpatory materials.

(a) Position of the House Managers.

The position of the House of Representatives was initially stated in a memorandum submitted to the Senate Rules Committee.[4] It is fully set forth in the Response of the House Managers to Respondent's First Request for Production of Documents and Other Tangible Material filed with the Senate January 17, 1989. In summary, the House Managers believe that there should be no surprises at trial. Therefore, in spite of the fact that formal discovery is unprecedented in impeachment cases, the House Managers are prepared to provide to Respondent copies of materials falling into the following four categories: 1) any document, tape or other tangible evidence the House Managers intend to use at trial; 2) any statement of a witness to be called at trial that is sworn, or adopted or approved by the witness; 3) any transcribed statement by a witness to be called at trial which is a substantially verbatim recital of an oral statement by the witness and was recorded contemporaneously with the making of such statement; and 4) any exculpatory evidence. The overwhelming majority of the documents falling into these four categories has already been provided to Respondent. The House Managers' further production of materials, however, is conditioned on the imposition of a reciprocal rule requiring Respondent to provide to the House all documents or materials in his possession which fall into the first three categories listed above.

In response to the March 24, 1989 letter from Senate Legal Counsel, the House Managers submit Exhibit A attached hereto, which is a description of the materials made available to the House in this impeachment proceeding.

---

[4] See Reply of the House Managers to the September 8, 1988 Letter from the Senate Committee on Rules and Administration at 9-12, reprinted in S. Rep. 100-542 at 109-112.

(b) Recommendation.

The House Managers believe that the issue of discovery has been fully briefed by the parties and is ready for resolution. The House Managers recommend that this matter be discussed at the April 4, 1989 meeting and argued at the meeting of the Committee during the week of April 10, 1989. At that time a date should be set for the parties to exchange pertinent documents and materials pursuant to the Committee's ruling on this matter.

3. STIPULATIONS. In an early memorandum submitted to the Senate Rules Committee, the House Managers stated their intention to request admissions as to matters of fact and the genuineness of documents.[5] This proposal was further refined in a later memorandum submitted to the Senate Rules Committee.[6] On December 15, 1988, the House Managers submitted their Proposed Stipulation of Documents and their Proposed Stipulation of Facts. Although Judge Hastings has not specifically responded to the proposed stipulations, his counsel has indicated in meetings with Senate Legal Counsel and in a memorandum to the Senate Rules Committee that he does not intend to agree to any stipulation of facts and that stipulations to the genuineness of documents cannot be made until the documents have been inspected.[7] Although the documents have been available for inspection since the end of January 1989, Respondent has declined to inspect any documents.

(a) Position of the House Managers.

The House has proposed two procedures to expedite the presentation of evidence at trial, one addressing stipulations of facts and the other addressing the genuineness of documents. The House proposal would require that any proposed stipulation regarding the admissibility of a document and any proposed stipulation of fact filed with the Senate will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation should not be taken as true. It is the position of the House that such procedural rules should be adopted by the Committee, and a date set by which written objections must be filed. In the event that a party files written objections to proposed stipulations, a smaller committee, consisting of one or two Committee members, should be designated by the Chairman to review the matter and rule on whether there is a reasonable basis for the objection.

---

[5] See Response of the House Managers to the August 10, 1988 Letter from the Senate Committee on Rules and Administration at 13.

[6] See Response of the House of Representatives to the December 12, 1988 Letter from the Senate Committee on Rules and Administration at 2-3, reprinted in S. Rep. No. 1, 101st Cong., 1st Sess. 76-77 (1989) (hereinafter "S. Rep. 101-1").

[7] See Statement on Behalf of Untied States District Judge Alcee L. Hastings COncerning Procedures Necessary for a Fair Trial in the Senate in the Present Case of Impeachment at 8, reprinted in S. Rep. 101-1 at 105.

In the Proposed Stipulation of Facts, the House Managers list the facts in roughly chronological order. In the spirit of attempting to facilitate the stipulation process, the House has reorganized and reduced its proposed stipulations to those facts that, as far as the House is aware, are beyond any dispute. The House Managers' Revised Stipulation of Facts is attached hereto as Exhibit B. In brief, the revised stipulations are reorganized into 15 categories: facts based upon 1) airline records, 2) telephone records, 3) telephone messages, 4) hotel records, 5) court decisions, 6) the record of United States v. Romano, 7) the record of United States v. Borders, 8) the record of United States v. Hastings, 9) Judge Hastings' trial testimony, 10) geographical information, 11) Nagra body recordings, 12) other tape recordings, 13) FBI reports, 14) the 1985 wiretap application and progress reports, and 15) miscellaneous proof.

It has also been suggested by Senate Legal Counsel that the parties review and consider the system for facilitating an agreement on stipulations utilized in United States v. American Telephone & Telegraph Co.[8] In that complex and protracted litigation, Judge Harold Green required the parties to review each others' Statements of Contentions and Proof, and advise their opponents which portions of those statements might be stipulated to in their present form or with suggested language changes. The parties exchanged proposed language changes in an effort to negotiate an agreement on the stipulations. Where the party objected to a stipulation, the basis of that objection had to be stated. Where the objection was based on a need for further information, the precise additional discovery had to be indicated. Where the opposing party refused to provide such discovery, a Magistrate reviewed the matter. A Special Master was selected to oversee the stipulation process.

---

[8] 83 F.R.D. 323 (D.D.C. 1979) and 88 F.R.D. 47 (D.D.C. 1980).

It is the position of the House Managers that such a process is ill-suited for the present case. This case is not nearly so complex. In addition, the stipulations proposed by the House are well documented and in most instances have never been contested. The present case does not require the sophisticated scheme utilized in the AT&T case and it is likely that the implementation of such a process would be time consuming and unnecessarily complicated.

The House Managers believe that their Revised Stipulations of Fact and proposed admissions in the absence of a reasonable objection are more likely to facilitate the process given the nature of the stipulations being sought, and Respondent's stated unwillingness to stipulate.

(b) Recommendation

The question of what procedures should be adopted to facilitate stipulations requires no more briefing and should be discussed at the April 4, 1989 meeting with the Chairman and Vice-Chair, and resolved at the meeting of the Committee during the week of April 10, 1989. If the rules proposed by the House are adopted, the Committee should then set a date by which any objections to stipulations must be filed.

4. **SCOPE OF THE EVIDENCE TO BE PRESENTED**. On January 17, 1989, the House of Representatives filed a Motion in Limine to Exclude Irrelevant Evidence and a supporting memorandum. This motion requested that the Senate exclude all evidence offered to prove the motivations of the persons in the Executive and Judicial Branches who investigated, prosecuted or considered matters which are the subject of the Articles of Impeachment, and that the Senate limit evidence on the topic of Respondent's general character and reputation consistent with the Claiborne precedent. Judge Hastings has not responded to the Motion in Limine.

(a) Position of the House.

By its Motion in Limine the House is attempting to exclude the presentation of evidence at trial that is irrelevant under any circumstances. The motion is not intended to address topics for which the determination of relevance would depend on the context in which they are raised. The Senate clearly has the power to limit the scope of the evidence presented in an impeachment trial and the exercise of that power is essential to a fair and expeditious trial of this impeachment. The request of the House Managers is supported by Senate precedent, and particularly by the decision of the Rule XI Committee with regard to a similar motion made by the House Managers in the impeachment trial of Judge Claiborne.[9]

(b) Recommendation.

At the April 4, 1989 meeting with the Chairman and Vice-Chairman, a briefing schedule should be established for the submission of Judge Hastings' response to the House Managers' Motion in Limine. The House Managers suggest that Judge Hastings' response be filed in time for argument on the motion at the meeting of the Committee during the week of April 10, 1989.

5. **SUBPOENA POWER**. Although Respondent has made no formal request, he has indicated that he will seek authority from the Senate to issue subpoenas or to have subpoenas issued on his behalf. In his January 17, 1989 Memorandum to the Senate Rules Committee, Respondent indicated that he wishes to have witnesses subpoenaed for pre-trial discovery purposes as well as for trial.[10] In addition Respondent has questioned the propriety of the House's exercise of its subpoena power subsequent to the adoption of the Articles of Impeachment on August 3, 1988.[11]

(a) Position of the House Managers.

As a general rule, the House takes no position on the issuance of subpoenas on behalf of Respondent. The House would note that Respondent has made no showing that he has been unable to conduct pre-trial discovery prior to this time without reliance upon subpoenas. In view of the possibility that such pre-trial discovery may be used to delay the trial, or to delve into irrelevant matters, the House suggests that the procedure adopted for the issuance of subpoenas include an opportunity for the House to voice its objections prior to the issuance of any subpoena.

---

[9] See Report of the Senate Impeachment Trial Committee, Hearings before the Senate Impeachment Trial Comm., 99th Cong., 2d Sess. 690-91 (Part 1) (1986), cited in the House Managers' Memorandum in Support of Motion in Limine to Exclude Irrelevant Evidence at 4-8.

[10] See Statement on Behalf of United States District Judge Alcee L. Hastings Concerning Procedures Necessary for a Fair Trial in the Senate in the Present Case of Impeachment at 5-6, reprinted in S. Rep. 101-1 at 102.

[11] Id. at 4-5, reprinted in S. Rep. 101-1 at 101.

With regard to the continuing power of the House to issue subpoenas, the Managers believe that the House retains independent authority to issue subpoenas even after the adoption of Articles of Impeachment and their presentation to the Senate. Very recently, one court recognized the House of Representatives' authority. The House Managers applied to the United States District Court for the Southern District of Florida for the original tape recordings from the wiretap in the bribery conspiracy case in order to make the tapes available for the Senate trial.[12] Judge Hastings opposed the application on the ground that only the Senate could apply for the original tape recordings. On March 20, 1989, the Court granted the request of the House, finding that the Senate rules do not prescribe the exclusive procedure for the obtaining of evidence.[13]

Despite the independent authority of the House to issue subpoenas, however, the House Managers will request the Senate to issue any additional subpoenas needed for the presentation of documents and witnesses at the trial of these Articles of Impeachment.[14]

(b) Recommendation.

A schedule should be established for the submission of any requests for subpoenas and the filing of objections to such requests. Such a schedule should address both pre-trial and trial subpoenas, although requests for trial subpoenas might best be included in pre-trial statements submitted by the parties prior to trial. This schedule should be discussed and established at the April 4, 1989 meeting with the Chairman and the Vice-Chairman.

---

[12] The House Managers already have copies of some of the tapes, to which Respondent has been granted access.

[13] See Order, dated March 20, 1989, attached hereto as Exhibit C.

[14] For the information of the Committee, the House has issued subpoenas subsequent to the adoption of the Articles of Impeachment in this case for two purposes. Senate Legal Counsel requested the House to undertake the gathering of original documents to be introduced at trial, and the House has used subpoenas to obtain such originals. The House also issued three subpoenas for the purpose of depositions. Ultimately, two depositions were taken. The transcripts will be provided to Respondent pursuant to category (2) of the discovery proposal of the House Managers referenced above.

6. **WITNESSES**. On two occasions the Senate Committee on Rules and Administration directed the parties to provide a preliminary list of witnesses with summaries of their proposed testimony. The House Managers provided such lists with specific proffers of testimony.[15] In his submissions to the Senate Rules Committee, Judge Hastings provided general descriptions of the categories of witnesses he might call.[16] In addition, he referred the Senate Rules Committee to lists of witnesses attached to his First Request for Production of Documents and Other Tangible Materials. These lists are of the witnesses called at Judge Hastings' criminal trial, at William Borders' criminal trial, before the Eleventh Circuit Investigating Committees, before the House Subcommittee on Criminal Justice, and of other persons "having pertinent information."[17]

The Senate Committee on Rules and Administration also requested that the parties identify any witnesses who might assert testimonial privileges and thereby require the implementation of procedures to grant immunity. The House has stated that it has no present intention of calling any such witnesses. Judge Hastings alluded to William Dredge and William Borders as potentially troublesome witnesses. However to date Respondent has not stated an intention to call either Dredge or Borders as witnesses.

In addition, in the March 24, 1989 letter from Senate Legal Counsel, the parties were asked to address whether the Committee should commence a proceeding leading to a grant of immunity for William Borders, and the timing of such a proceeding and any subsequent proceedings if immunity is obtained.

---

[15] See Response of the House Managers to the August 10, 1988 Letter from the Senate Committee on Rules and Administration at 9-13, reprinted in S. Rep. 101-1 at 60-63. For further additions, see Response of the House of Representatives to the December 12, 1988 Letter from the Senate Committee on Rules and Administration at 3-4, reprinted in S. Rep. 101-1 at 64.

[16] See Memorandum on Behalf of United States District Judge Alcee L. Hastings Concerning the Use of a Rule XI Senate Trial Committee to Receive Evidence in this Case at 17-20, reprinted in S. Rep. 101-1 at 65-68. See also Comments on Behalf of United States District Judge Alcee L. Hastings on the Views Expressed by the House Managers in their Memorandum Submitted on September 6, 1988 at 8-9, reprinted in 101-1 at 69.

[17] See Addenda C, D and E to Respondent's First Request for Production of Documents and Other Tangible Material.

(a) Position of House Managers.

The House suggests that the parties be required to provide to the Committee specific witness lists with proffers of the proposed testimony by each witness. A preliminary list should be submitted in the near future and a final list should be included in pre-trial statements from the parties. Witnesses who are not on the final witness list should be allowed to testify only if the party offering the witness makes a showing of "good cause" for failing to include the witness in the pre-trial statement. The House Managers make this proposal with the understanding that both the preliminary and final witness lists would not include those witnesses who may be called during rebuttal or surrebuttal.

In response to the inquiry posed in the March 24, 1989 letter from Senate Legal Counsel, if Judge Hastings indicates his intention to call William Dredge at trial, the House Managers will attempt, through the FBI, to locate and produce Dredge.

Finally, it is the position of the House Managers that if Judge Hastings intends to call William Borders at trial, he must indicate his intent in his preliminary witness list. If Borders is named on the preliminary list, the Committee should then commence a proceeding such as a deposition to determine whether a grant of immunity will be necessary and, if it is required, the Committee should take the steps necessary to obtain the immunity. The House Managers believe that in order to avoid any undue delay of the trial, these proceedings should be commenced as early as possible. In addition, the House Managers believe that if Borders refuses to testify even with a grant of immunity, enforcement proceedings should be authorized as early as possible.

(b) Recommendation.

A schedule for the submission of preliminary witness lists should be established at the April 4, 1989 meeting with the Chairman and Vice-Chairman. The procedures to be followed with respect to the possible testimony of William Borders should also be discussed and established at the April 4, 1989 meeting.

7. **PRE-TRIAL STATEMENT**. To date, there has been no discussion of pre-trial statements. However, in the Senate impeachment proceeding of Judge Harry Claiborne, the Rule XI Committee adopted such a procedure.

(a) Position of House Managers.

The House Managers recommend that the Committee require the parties to submit pre-trial statements one week prior to the beginning of the presentation of evidence. As in the Claiborne proceeding, the pre-trial statements would include a final list of witnesses to be called at trial, a summary of their proposed testimony and a summary of the evidence the parties intend to introduce in support of or in defense to the 17 Articles of Impeachment. In addition, the pre-trial statement should contain a list of the exhibits each party intends to introduce at trial. The exhibits could then be pre-marked, exchanged by the parties and filed with the Committee in advance of trial.

(b) Recommendation.

This proposal should be considered at the meeting of the Chairman and Vice-Chair on April 4, 1989.

8. **SCHEDULING OF TRIAL**. The Committee should also consider the scheduling of the trial and any procedures that will facilitate a smooth and expeditious presentation of the evidence.

(a) Position of the House Managers.

The House Managers recommend that the Committee schedule the trial in a manner that allows for the presentation of evidence during at least three consecutive days per week, and for five consecutive hours per day (preferably in the afternoon). The House Managers recommend this procedure for two reasons. First, the majority of witnesses to be called will have to travel to Washington, D.C. to testify. In order to ensure that their testimony is completed during one trip, consecutive days and hours of testimony are necessary. Second, significant blocks of trial time are required to ensure a coherent and meaningful presentation of the evidence to the benefit of the Committee and the parties.

In addition, the House Managers are available to present evidence during the one week per month that the Senate is out of session.

(b) Recommendation.

The House Managers ask that the issue of scheduling be discussed at the April 4, 1989 meeting with the Chairman and Vice-Chair.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron /LEF
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

March 31, 1989

DOCUMENTS MADE AVAILABLE TO THE HOUSE OF REPRESENTATIVES IN THIS IMPEACHMENT PROCEEDING

1. Materials accompanying the Certificate of the Judicial Conference of the United States concurring in the determination of the Judicial Council of the Eleventh Circuit that impeachment of Judge Hastings may be warranted. These materials include the Report of the Eleventh Circuit Investigating Committee, 28 volumes of testimony taken by the Eleventh Circuit Investigating Committee and approximately 2800 exhibits. The House has provided Respondent with either copies of or access to these materials.

2. Record of the Eleventh Circuit Investigating Committee appointed to investigate the disclosure of confidential wiretap information. The House received these materials from Respondent.

3. Working files of John Doar, Counsel to the Eleventh Circuit Investigating Committee. These materials are described in the two orders attached as Addenda A and B to Respondent's First Request for Production of Documents and Other Tangible Material.

4. Records of Grand Jury 81-A (MIA) (investigating the bribery conspiracy) and Grand Jury 86-3 (MIA) (investigating the unauthorized disclosure of wiretap information). The House has provided both records to Respondent.

5. Records of the United States District Court for the Southern District of Florida, In the Matter of the Application of the United States of America for an Order Authorizing the Interception of Wire Communications, Misc. No. 412-Hastings, the wiretap which Respondent was supervising. Respondent has received copies of these materials.

6. Department of Justice investigative and trial files pertaining to the bribery conspiracy case and the investigation into the disclosure of confidential wiretap information. Many documents are duplicative of those contained in categories 1 and 2 above.

7. FBI investigative files and tape recordings, falling into five general categories of documents. Many documents are irrelevant to the charges contained in the Articles of Impeachment or are duplicative of documents contained in categories 1 and 2 above. The FBI redacted the documents prior to providing them to the House. Respondent has been granted access to all tape recordings. The five categories are:

EXHIBIT A

i) documents pertaining to the bribery conspiracy case and the investigation of the unauthorized disclosure of wiretap information, including FBI 302s, teletypes, investigative reports, surveillance records, forensic reports, administrative memoranda, transcripts of tape recordings and newspaper articles.

ii) documents pertaining to the FBI background check prior to Respondent's appointment to the Federal bench.

iii) documents pertaining to an FBI investigation of an alleged terrorist organization believed to have made threats to numerous people, including Respondent.

iv) documents pertaining to other FBI investigations that are irrelevant to the charges in the Articles of Impeachment.

v) documents pertaining to requests by the Eleventh Circuit Investigating Committee for FBI assistance in locating witnesses and documents, and conducting investigations.

NOTE: The House produced a 14 volume Statement of Information that contains all the documentary evidence it relied upon in support of Articles I through XV and XVII. The documents reproduced in the Statement were selected from the categories of documents listed above (excluding category 5) and from those independently gathered by the Subcommittee on Criminal Justice. The House Managers have provided Respondent with a copy of the complete Statement of Information.

In addition, the House has published the materials relied upon in support of Article XVI in Appendix IV to the hearings of the Subcommittee on Criminal Justice in this matter. A copy of that appendix has been provided Respondent.

Finally, the House Managers will provide Respondent with any document in its possession that falls into any of the four discovery categories proposed by the House, if the document has not already been provided.

IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

REVISED STIPULATION OF FACTS

The House of Representatives, through it's Managers, proposes that the parties stipulate to the following facts for the purposes of this action only:

I. Airline Records[1]

39. On September 11, 1981, Judge Hastings was scheduled to leave Miami International Airport at 3:48 p.m. and arrive in Washington, D.C. at 6:00 p.m.

40. On September 11, 1981, Judge Hastings' flight was delayed and he actually left Miami International Airport at 5:50 p.m. and arrived at Washington National Airport at 8:04 p.m.

43. On September 11, 1981 William Borders was scheduled to leave Washington National Airport for Miami, Florida at 7:30 p.m. on Air Florida flight 131.

44. On September 11, 1981, William Borders did not take Air Florida flight 131 for which he had reservations and instead departed from Washington National Airport on Eastern Airlines flight 459 which was scheduled to depart at 9:20 p.m.

45. On September 12, 1981, William Borders arrived in Miami, Florida at 1:30 a.m. via Eastern Airlines flight 655 from Atlanta.

61. On September 12, 1981, William Borders arrived at West Palm Beach, Florida after 11:30 a.m.

67. On September 12, 1981, at 1:06 p.m., William Borders called Eastern Airlines and made a reservation for Eastern

---

[1] For ease of reference, all the stipulations listed below retain their number from the House Managers' original Proposed Stipulation of Facts.

EXHIBIT B

Airlines flight 532, from West Palm Beach, Florida, to Atlanta, Georgia, for September 12, 1981, scheduled to depart at 4:12 p.m., and for Eastern Airlines flight 904, Atlanta, Georgia to Washington, D.C., for September 12, 1981, scheduled to depart Atlanta at 6:45 p.m.

68. On September 12, 1981, at 3:30 p.m., William Borders called Eastern Airlines and cancelled his reservation for Eastern Airlines flight 532 from West Palm Beach, Florida to Atlanta, Georgia, and made a reservation for Eastern Airlines flight 266 from Melbourne, Florida, to Atlanta, Georgia for September 12, 1981, scheduled to depart Melbourne, Florida at 4:35 p.m.

69. On September 12, 1981, at 4:39 p.m., at the Melbourne Airport, William Borders cancelled his reservation for Eastern Airlines flights 266 (Melbourne to Atlanta) and 904 (Atlanta to Washington), and made a reservation on Eastern Airlines flight 858 from Orlando, Florida to Washington, D.C., for September 12, 1981, scheduled to depart Orlando at 8:08 p.m. and to arrive in Washington at 10:00 p.m.

70. On September 12, 1981, at 6:02 p.m. at the Orlando, Florida airport, William Borders cancelled his reservation for Eastern Airlines flight 858 (Orlando to Washington) and made a reservation for Eastern Airlines flight 664, Orlando to Baltimore-Washington International Airport, for September 12, 1981, scheduled to depart Orlando at 6:45 p.m. and arrive at Baltimore-Washington International Airport at 8:35 p.m.

71. On September 12, 1981, William Borders flew from Orlando, Florida to Baltimore Washington International Airport on Eastern Airlines flight 664.

72. On September 12, 1981, Eastern Airlines flight number 664 arrived at the gate at Baltimore-Washington International Airport at 8:58 p.m.

77. On September 15, 1981, William Borders and Madeline Petty flew from Washington, D.C. to Las Vegas, Nevada.

90. On September 18, 1981, William Borders and Madeline Petty flew from Las Vegas, Nevada to Washington National Airport. Borders did not leave the Washington National Airport and he departed at 9:20 p.m. for Miami, Florida, via Eastern Airlines flights 459 and 655.

99. On September 19, 1981, William Borders left Miami, Florida, for Washington, D.C. on Eastern Airlines flight 190, scheduled to depart the Miami International Airport at 10:55 a.m.

181. On October 9, 1981, there was a 4:35 p.m. direct flight to Miami, Florida, leaving from Washington National

Airport, with 14 seats available.

192. On Friday, October 9, 1981, at 5:31 p.m. Judge Hastings made a reservation to go to Fort Lauderdale, Florida on Delta Airlines flight 237 departing at 6:30 p.m. That flight was scheduled to continue on to Miami from Fort Lauderdale.

193. There is a handwritten notation on Judge Hastings' ticket for Delta flight 237 on October 9, 1981, crossing out Fort Lauderdale as his destination and substituting Miami as the final destination.

194. On October 9, 1981, Judge Hastings disembarked at Fort Lauderdale from Delta flight 237, which was scheduled to arrive at 8:38 p.m.

267. On July 20, 1981, Judge Hastings had a reservation on Eastern Airlines flight 197 departing Washington National Airport at 5:30 p.m. for Miami, Florida.

II. Telephone Records

36. On September 10, 1981, at 4:40 p.m., a call, lasting one minute or less, was placed from William Borders' law office to Judge Hastings' chambers.

38. On September 10, 1981, at 5:34 p.m., a call, lasting four minutes, was placed from William Borders' law office to Judge Hastings' chambers.

41. On September 11, 1981, Judge Hastings made two calls from the Miami International Airport to the office of William Borders. These calls were charged to Judge Hastings' residence phone.

171. The computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 reflect that only one call was made from the hotel to area code 305, which is the area code for south Florida. That call was made at "22:00" (10:00 p.m.), and was placed from a room other than the one occupied by Judge Hastings.

173. The C&P computer runs for October 9 and 10, 1981 show no long distance calls made from room 11229 of the L'Enfant Plaza Hotel until the morning of October 10, 1981 at 1:56 a.m.

174. The telephone records of Judge Hastings' residence and chambers, and the telephone records of Patricia Williams' residence, do not reflect any calls from the L'Enfant Plaza Hotel in Washington, D.C. on October 9, 1981 being charged to those numbers.

186. On October 9, 1981, at 4:37 p.m., Judge Hastings called his mother from a pay telephone at Baltimore-Washington International Airport and spoke for four minutes. He placed another call to her at 4:43 p.m. and spoke for two minutes.

187. On October 9, 1981, at 5:06 p.m., Judge Hastings called Patricia Williams at her home in Lauderhill, Florida from a pay telephone at Baltimore-Washington International Airport and spoke for one minute.

189. When Patricia Williams called Judge Hastings back at 5:07 p.m., on October 9, 1981, at the Baltimore-Washington International Airport, Judge Hastings told her to go outside, find a pay telephone and call him back.[2]

190. On October 9, 1981, at 5:22 p.m., Patricia Williams called Judge Hastings at a pay telephone at the Baltimore-Washington International Airport from a pay telephone in a shopping center near her home in Lauderhill, Florida.

191. After Patricia Williams called him at the Baltimore-Washington International Airport at 5:22 p.m. on October 9, 1981, Judge Hastings took her number, moved to another pay telephone at Baltimore-Washington International Airport and, at 5:24 p.m., called Ms. Williams at her pay telephone.[3]

201. On Monday, October 12, 1981, three days after Borders' arrest, at 6:38 p.m. a telephone call was made from Judge Hastings' home telephone number to William Borders' home telephone number. The call lasted 2 minutes.

247. Patricia Williams had telephoned Eleanor Golar-Williams at her home on eleven occasions between April 14, 1979 and August 2, 1981.

269. On February 20, 1981, at 7:30 a.m., Judge Hastings called William Borders. The call lasted three minutes.

273. On April 9, 1981, at 12:15 p.m., a call was placed from a pay telephone in the corridor of the third floor of the federal courthouse in Miami, Florida near Judge Hastings' chambers to a pay telephone in the lobby of the federal courthouse in Washington, D.C. The call lasted one minute or less and was charged to Judge Hastings' residence.

---

[2] This stipulation is also based upon Judge Hastings' trial testimony.

[3] This stipulation is also based upon Judge Hastings' trial testimony.

280. Judge Hastings called William Borders on May 6, 1981, at the home of Madeline Petty after midnight, from Madison, New Jersey.

283. Judge Hastings called William Borders twice on May 11, 1981 before 7:00 a.m. at the home of Madeline Petty.

284. Judge Hastings called William Borders on July 5, 1981, at 8:35 p.m. The call lasted less than one minute.

285. Judge Hastings called William Borders on July 7, 1981, at 11:56 a.m. The call lasted less than one minute.

III. Telephone Messages

34. On September 10, 1981, at approximately 12:45 p.m., Cynthia Rogers recorded in the telephone log at William Borders' office the following travel reservations for Borders: Fri - Air Fla. #131: 7:30 - 9:45; Sat - Eastern #890: 9:25 - 9:51 a.m.; Sun - Delta - West Palm #608: 7:00 a.m. - 9:49 - Atlanta.

35. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' office reflecting a call at 9:35 a.m. from Judge Hastings to William Borders with the message "not coming to D.C. today. Call him between 4:30 and 5 today; will be in his office for call."

37. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law office reflecting a call at 5:10 p.m. from Judge Hastings to Borders with the following message: "He'll be waiting for call - Have them get him off the bench. He'll also let them know if you call to get him to phone."

42. On September 11, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law offices reflecting a call at 4:20 p.m. from Judge Hastings to William Borders with the message "flight further delayed; not leaving until 5."

102. On October 2, 1981, prior to 3:00 p.m. William Borders received a message that "Frank from Florida" (H. Paul Rico) had called.

136. At 11:13 a.m. on October 9, 1981, H. Paul Rico called William Borders' law office and left a message for Borders to call him.[4]

---

[4] This stipulation is also based upon a conversation recorded pursuant to a federal wiretap authorization.

272. On April 9, 1981, at approximately 10:40 a.m., Judge Hastings called William Borders' office. He left a message for William Borders to call and said he would be "at his office between 12 and 1."

275. On April 9, 1981, at approximately 12:15 p.m., William Borders' secretary made a reservation for Mr. Borders to fly to Miami the following weekend.

277. Judge Hastings called William Borders on April 30, 1981 (no time recorded), leaving a message saying, "at home at 6:30 only time he will be at home."

278. Judge Hastings called William Borders on May 1, 1981 and left no message.

279. Judge Hastings called William Borders on May 4, 1981, between 10:20 and 10:40 a.m., leaving an "urgent" message, "Will await call between 12 and 1 from you."

282. Judge Hastings called William Borders on May 7, 1981, at 4:30 p.m. and left a message for Borders to call him at 7:00 a.m. the next morning.

286. Judge Hastings called William Borders on July 9, 1981, at 11:50 a.m., and left a message saying, "Sat. morning Air Florida #91 at 10:45 from Key West. Will be at departing at 1:00."

IV. Hotel Records

46. On September 11, 1981, Judge Hastings registered at the Sheraton-Washington Hotel in Washington, D.C. at 10:14 p.m.

73. On September 12, 1981, Judge Hastings was registered at the Sheraton-Washington Hotel, room 7022.

74. On September 12, 1981, Jessie McCrary, a Florida attorney, was registered at the Sheraton-Washington Hotel, room 7024, the room next to Judge Hastings.

91. On September 19, 1981, William Borders registered at the Miami International Airport Hotel at 2:25 a.m.

132. A suite and an adjoining room at the L'Enfant Plaza Hotel had been reserved for William Borders and Judge Hastings, respectively, beginning October 9, 1981.

175. On October 9, 1981, Judge Hastings was registered for room 11229 of the L'Enfant Plaza Hotel.

V. Court Decisions

21. On June 19, 1981, a three-judge panel of the Fifth Circuit issued an opinion in the case of United States v. Martino, 648 F.2d 367, in which the court held that in using the term "interest" in 18 U.S.C. Section 1963(a) "Congress did not intend to include . . . the fruits and profits obtained from a pattern of racketeering activity" and reversed in part a forfeiture order which had forfeited insurance proceeds received as a result of an arson.

111. On August 27, 1981, the Fifth Circuit issued an opinion in the case of United States v. Peacock, which followed Martino.

VI. Record of United States v. Romano

6. The criminal case of United States v. Romano, Crim. No. 78-364, was assigned to Judge Hastings on October 24, 1979.

7. The Romano case was based on a 21-count indictment of two brothers, Thomas and Frank Romano. The charges against the defendants included conducting an enterprise through a pattern of racketeering activity, investing racketeering income in a legitimate enterprise, theft and embezzlement from an employees benefit plan, wire fraud, mail fraud and income tax evasion. The charges were brought under the Racketeer Influenced and Corrupt Organizations statute ["RICO"] which required, under certain circumstances, the forfeiture of property illegally obtained.

8. In December 1980, Thomas and Frank Romano were tried and convicted by a jury with Judge Hastings presiding.

11. Thomas and Frank Romano waived their right to a jury on the forfeiture matter.

12. Following the conviction of Thomas and Frank Romano, Judge Hastings held hearings on December 30, 1980 and February 20, 1981 to determine whether certain financial interests of the Romano brothers should be forfeited because the interests were the product of racketeering activities and therefore subject to forfeiture under RICO.

13. On February 17, 1981, Neal Sonnett entered his appearance on behalf of Thomas and Frank Romano as additional counsel in the case then pending before Judge Hastings.

270. On February 20, 1981, the final evidentiary hearing on the forfeiture issue in the Romano case was held.

14. On February 20, 1981, Judge Hastings reserved ruling on the forfeiture in the Romano case, requested that the parties make further submissions and stated that he would schedule the sentencing after he had received the submissions by the parties.

271. On April 8, 1981, the last of the initial set of memoranda relating to the forfeiture issue in the Romano case were filed.

15. On April 23, 1981, one of Judge Hastings' law clerks, Jeffrey Miller, informed James Deichert, the Assistant United States Attorney in the Romano case, that the sentencing in the Romano case would be held on May 11, 1981.

16. On April 28, 1981, a Notice of Sentencing was filed in the Romano case, scheduling the sentencing for May 11, 1981 at 1:00 p.m.

17. On May 4, 1981, Judge Hastings entered an order in the Romano case requiring Thomas and Frank Romano to forfeit a total of $1,162,016 to the United States. He adopted all of the proposed findings of fact submitted by the prosecution.

18. On May 11, 1981, Thomas and Frank Romano appeared for sentencing and their counsel, Neal Sonnet, requested a continuance in order to present additional arguments to the court. Counsel for the United States opposed the continuance on the grounds that five months had passed since the conviction and all legal issues had been fully briefed by the parties.

19. On May 11, 1981, Judge Hastings continued the sentencing of Thomas and Frank Romano to a date to be decided by the parties.

20. On June 5, 1981, Thomas and Frank Romano filed a motion for reconsideration of the May 4, 1981, forfeiture order issued by Judge Hastings.

24. At the July 8, 1981 sentencing hearing, Judge Hastings confirmed his May 4, 1981 forfeiture order, stating "I will allow the forfeitures as previously set out by the Court to be maintained, and . . . a brief order will be prepared that will recite the reasoning of the Court, at least insofar as the new matters that have arisen, more specifically the cases cited by counsel up to this time."

25. On July 8, 1981, Judge Hastings sentenced each of the Romanos to three years imprisonment to be followed by a three-year period of probation and advised them of their rights to appeal.

26. The sentences imposed on Thomas and Frank Romano on July 8, 1981 were consistent with the recommendations of the United States Probation Office.

27. On July 14, 1981, Thomas and Frank Romano filed notices of appeal from the final judgement and order of conviction, and from the judgement of forfeiture issued from the bench on July 8, 1981.

100. As of October 2, 1981, Judge Hastings had not issued an order vacating the previous forfeiture of Thomas and Frank Romano's property.

110. Between July 8, 1981, the date of the argument on the motion to reconsider the May 4, 1981 Romano forfeiture order, and October 6, 1981, the date the order was issued, there was no additional briefing or argument by the parties on any matter in the Romano case.

118. On October 6, 1981, an order reversing the forfeiture of $845,000 of the $1,162,016 of Thomas and Frank Romano' property previously ordered forfeited was signed by Judge Hastings and mailed out.

VII. Record of United States v. Borders

202. Grand Jury 81-1 (MIA) returned indictments against William Borders and Judge Hastings on December 29, 1981.

203. Grand Jury 81-1 (MIA) indicted William Borders on four counts. The first count charged Borders with conspiring to solicit a bribe in a pending criminal case, namely, United States v. Romano, in violation of 18 U.S.C. Section 371. The second count charged Borders with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. Section 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, H. Paul Rico, he believed to be a defendant in the Romano case. Counts three and four alleged that Borders travelled in interstate commerce with the intent to carry out a bribery in violation of 18 U.S.C. Section 201.

214. On March 8, 1982, in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), Judge Gignoux granted William Borders' motion for change of venue of his trial, and ordered his case to be tried in Atlanta, Georgia.

215. William Borders was tried before a jury in Atlanta, Georgia from March 22, 1982 until March 29, 1982.

216. In the trial of United States v. Borders, (No. CR-82-75-A), neither William Borders nor Judge Hastings was called as a witness to testify.

217. The jury in United States v. Borders, (No. CR-82-75-A), convicted Borders on all counts on March 30, 1982.

VIII. Record of United States v. Hastings

204. Grand Jury 81-1 (MIA) indicted Alcee Hastings on two counts. The first count charged Judge Hastings with conspiring to solicit a bribe in a pending criminal case, namely, United States v. Romano, in violation of 18 U.S.C. Section 371. The second count charged Judge Hastings with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. Section 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, H. Paul Rico, he believed to be a defendant in the Romano case.

205. United States v. Alcee Hastings, No. 81-596-Cr. ETG (S.D. Florida) was assigned to Judge Edward T. Gignoux on January 4, 1981, sitting by designation.

206. On January 19, 1982, Judge Gignoux issued an order in United States v. Alcee Hastings, No. 81-596-Cr. ETG (S.D. Florida), requiring the defendant to produce for the government, inter alia, those documents he intended to introduce as evidence in chief at the trial and requiring the government to produce, inter alia, all written or recorded statements made by the defendant.

207. Pursuant to the January 19, 1982 discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the prosecution produced various documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and William Borders.

208. Pursuant to the January 19, 1982 discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the defense produced, on February 12, 1982, the documents it intended to introduce as evidence in chief at the trial.

209. No letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings were included in Judge Hastings' production on February 12, 1982 pursuant to the January 19, 1982 reciprocal discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida).

211. Joel Hirschhorn withdrew as counsel for Judge Hastings

on March 3, 1982.

212. On February 1, 1982, Judge Hastings filed a motion in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), to quash his indictment and dismiss the criminal proceedings against him for lack of jurisdiction on the ground that a sitting federal judge had to be impeached before a criminal prosecution could proceed.

213. On March 2, 1982, Judge Hastings' trial in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), was stayed pending the interlocutory appeal of the motion he had filed challenging his prosecution prior to impeachment.

219. On July 12, 1982, the United States Court of Appeals for the Eleventh Circuit upheld the trial court's denial of Judge Hastings' motion to quash his indictment and dismiss in United States v. Hastings.

220. In December 1982, Judge Hastings produced for the prosecution what he described as handwritten drafts of letters regarding Hemphill Pride, which he stated were written on October 5, 1981.[5]

221. The letters produced by Judge Hastings in December 1982 consisted of four yellow legal pad sheets, in Judge Hastings' handwriting, comprising three letters, one addressed to Hemphill Pride, and the other two addressed to unspecified friends and supporters.

222. The following attorneys, inter alia, filed Notices of Appearance for Judge Hastings in United States v. Hastings, for the indicated time periods: Joel Hirschhorn (1/12/82 to 3/2/82); Andrew Mavrides (3/2/82 to 10/27/82); Patricia Williams (10/27/82 through conclusion of case).

225. The trial in United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), was held in Miami, Florida, beginning January 19, 1983, and continuing until February 4, 1983.

226. In United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), Judge Hastings was represented by himself and Patricia Williams.

227. In United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), William Borders was not called to testify.

---

[5] The language of this stipulation has been changed from the original proposal by the House in order to better reflect the record in United States v. Hastings. The stipulation is also based upon Judge Hastings' trial testimony.

228. In United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), Judge Hastings took the stand, appearing as the final witness in his defense.

IX. Judge Hastings' Trial Testimony

4. As of January 1981, Judge Hastings and William Borders had known each other for eleven or twelve years.

5. As of January 1981, Judge Hastings and William Borders had a long standing personal and professional relationship, stemming, in part, from their active roles in the National Bar Association, an association of black attorneys.

89. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not have William Borders paged.

109. On the afternoon of October 4, 1981, William Borders called Judge Hastings' home.

127. In the late summer of 1981, the National Bar Association planned a testimonial dinner/boat ride in honor of William Borders, the immediate past president of the organization.

128. Judge Hastings was a co-sponsor of the testimonial dinner/boat ride organized by the National Bar Association in honor of William Borders.

129. The National Bar Association dinner/boat ride in honor of William Borders was scheduled for October 9, 1981.

163. After William Borders left his office on October 9, 1981 at approximately 12:02 p.m., Judge Hastings left that office, and walked to a book store, and from there to a clothes store, where he spoke with Brenda Russell, the owner, who was a friend, and used her telephone.

164. On October 9, 1981, after leaving Brenda Russell's store, Judge Hastings went to two luggage shops, and purchased a leather purse.

165. On October 9, 1981, after leaving William Borders' office and making stops at several downtown shops, at approximately 1:00 p.m. Judge Hastings returned to his room at the L'Enfant Plaza Hotel and ordered lunch to be sent up by room service.

166. Shortly after Judge Hastings ordered room service at the L'Enfant Plaza Hotel on October 9, 1981, Hemphill Pride came

to Judge Hastings' room. Judge Hastings then ordered additional food from room service and the men had lunch together in Judge Hastings' room.

167. After arriving at the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings sent his suit to the hotel valet service.

168. Judge Hastings left the L'Enfant Plaza Hotel for Florida on October 9, 1981 without picking up his suit from the hotel valet service.

169. Judge Hastings left the hotel for Florida on October 9, 1981 without paying for the cleaning of his suit by the hotel valet service or for the room service charges that he had incurred.

170. Judge Hastings left the L'Enfant Plaza Hotel to go to Florida on October 9, 1981 without checking out.

180. Judge Hastings left the L'Enfant Plaza Hotel at approximately 3:35 or 3:40 p.m. on October 9, 1981.

183. On October 9, 1981, Judge Hastings' car was parked at the Miami International Airport.

184. On October 9, 1981, Judge Hastings took a taxi, at a cost of fifty dollars, to Baltimore-Washington International Airport, from the L'Enfant Plaza Hotel in Washington, D.C.

188. During the 5:06 p.m. telephone call on October 9, 1981, from the Baltimore-Washington International Airport, Judge Hastings told Patricia Williams to call him back at a different pay telephone.

195. On October 9, 1981, Judge Hastings rented a car when he arrived at the Fort Lauderdale airport.

229. Judge Hastings testified at his trial that he and William Borders did not agree to solicit a bribe from Thomas and Frank Romano.

230. Specifically, Judge Hastings testified under oath at his criminal trial as follows:

Question: Did you agree with and conspire with William Borders to influence, in any way, the performance of your judicial duties?

Answer: No. I did not.

Question: Did you agree with Bill Borders and intend knowingly and voluntarily to participate in any kind of illegal undertaking?

Answer: None whatsoever. I did not do that, nor would I have done so, nor would I now.

231. Judge Hastings testified at his trial that he and William Borders did not agree that Judge Hastings would modify Thomas and Frank Romanos' sentences from a prison term to probation in exchange for the bribe.

232. Judge Hastings testified at his trial that he and William Borders had never agreed that Judge Hastings would set aside the May 4, 1981 forfeiture order as part of a bribery scheme.

233. Specifically, Judge Hastings testified under oath at his trial as follows:

Question: Let me say it this way: Is not the gist of what Mr. Borders said to the man he thought was Romano was that he could eliminate their jail sentences for $125,000. As a show of proof, A, he'd produce you at any restaurant they wanted, and B, a substantial portion of property would be returned to them?

Answer: I believe that is the gist of the conversation.

Question: Of course, you had no idea that was going on?

Answer: No, I didn't.

234. The letters produced by the defense in December 1982 in United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), were never typed or sent out or shown to Judge Hastings' secretary, Betty Williams.

235. At his trial, Judge Hastings testified that William Borders telephoned and spoke to Hemphill Pride at telephone number (803) 777-7716 on July 24, 1981.

236. Specifically, Judge Hastings testified under oath at his trial as follows:

Question: Judge, I would like to direct your attention to Item No. 11. Is there a phone call dated 7/24?

Answer: The second column. Item No. 11, dated July the 24th, is a telephone call to a number in Columbia, South Carolina, being Area Code 803-777-7716, and that call was for five minutes.

Question: Do you recognize that number?

Answer: The number is a number where Hemphill Pride may have been working. I am not certain if he was working there or not, but I have called that number myself.

Question: All right. And that call was made by Bill Borders, to Hemphill Pride on July 24th?

Answer: On July 24th, correct.

239. At his trial, Judge Hastings testified that he telephoned and spoke to Hemphill Pride at telephone number (803) 758-8825 on May 5, 1981 and September 2, 1981.

240. Specifically, Judge Hastings testified under oath at his trial as follows:

Question: Judge, would you tell us about the first call that I indicated with a little check on the front page, there?

Answer: The first call would be Item 2 under the second full itemization column, and it is a call . . . to Columbia, South Carolina. And the call is a five-minute call, and it is placed on September 2nd, at 11 something in the morning.

Question: And to whom was that call placed?

Answer: I know for a fact that this particular call was placed to Hemphill Pride.

Question: Did you speak with Hemphill Pride?

Answer: I certainly did.

Question: On that day?

Answer: I certainly did.

Question: All right. Now, would you seek out the second call that I have indicated on those toll records with a little check?

Answer: May 5th.

Question: May 5th?

Answer: '81. I spoke with Mr. Pride.

243. At his trial, Judge Hastings testified that he telephoned and spoke to Hemphill Pride at telephone number (803) 782-9387 on August 2, 1981.

244. Specifically, Judge Hastings testified under oath at his trial as follows:

Question:	Judge, I direct your attention to the August 2nd call.
Answer:	Yes.
Question:	The one for eighteen minutes' duration?
Answer:	Yes.
Question:	Would you tell us what time that call was placed?
Answer:	9:20 in the morning, to Columbia, South Carolina, to a place that I know is the number of Hemphill Pride, and it was a eighteen-minute call.
Question:	And did you, in fact, speak with Hemphill Pride for eighteen minutes on August 2nd?
Answer:	Yes I did;. . .

248. At his trial, Judge Hastings testified that he was surprised by William Borders' appearance at his Sheraton-Washington Hotel room at 10:00 p.m. on September 12, 1981.

249. Specifically, Judge Hastings testified under oath at his trial as follows:

Answer:	He [Mr. Borders] knocked on the door. I answered it . . . and I said words to the effect, "Some kind of surprise," without trying to remember exactly what I said, but I was surprised to see Bill. . .

* * * *

Question:	And you weren't waiting for Mr. Borders?
Answer:	Oh, absolutely not.

250. At his trial, Judge Hastings testified as to why, on October 5, 1981, he told his law clerk, Jeffrey Miller, to prepare the order returning a substantial amount of Thomas and Frank Romano' property.

251. Specifically, Judge Hastings testified under oath at

his trial as follows:

Answer:	. . . But the most pressing consideration was the complexity of the forfeiture aspect and his leaving the possibility of his not being there when I returned from the long trip with the exception of one day that I was going to come back to try a juvenile that was in jail. And it is for that reason that I made the statement to him that I wanted the order done.

* * * *

Question:	What was the urgency to issuing the order on October the 6th?
Answer:	Because Jeffrey was going to be leaving and I was going to be away for the month of October.

252. At his trial, Judge Hastings testified as to the meaning and purpose of his October 5, 1981 telephone conversation with William Borders.

253. Specifically, Judge Hastings testified under oath at his trial as follows:

Question:	At about 5:00 in the afternoon, you called Bill Borders on October 5th?
Answer:	Yes, I -- --
Question:	Why did you call him?
Answer:	I called him, then, because on October 4th, at some time in the afternoon, evidently he left a message for me with my mother . . . something about Hemphill. And again it had to do with matters that he and I had been in rather ongoing discussions about . . . trying to raise money for him.

* * * *

Question:	Now when you used the word "letters," were you in fact referring to letters?
Answer:	I certainly was.

* * * *

Question: Mr. Borders goes, "Ah-hah" and then what do you say?

Answer: I say "And everything's okay. The only thing I was concerned about was, did you hear if, ah, hear from him after we talked?"

Question: And what are you talking about there?

Answer: I am referring specifically to the call that I received from Mr. Borders either on September 20th or 21st wherein he indicated to me he expected to see Hemphill again, and he was asking him specifically about his exact financial condition.

* * * *

Question: And Mr. Borders, "See I talked to him and he wrote some things down for me." What did you take Mr. Borders to mean there?

Answer: The best I can think I took that he meant had to do with Hemphill's financial condition.

* * * *

Question: Just so I am perfectly clear on your answer, you thought he was going to get some more information about Mr. Pride?

Answer: That is all I could have possibly had in my mind at that time, sir.

* * * *

Question: Now, are these the letters to which you refer in your October 5th conversation?

Answer: Certainly.

* * * *

Question: Judge Hastings, you said you wrote these letters on the Bench. On what date did you write these letters?

Answer: October 5th.

* * * *

Question: All right. So we are 100 percent clear on this,

	you wrote these letters, Government or Defense Exhibit 29, from the Bench during the Santorelli trial on October 5?
Answer:	100 percent clear.

259. At his trial, Judge Hastings testified that he expected to meet William Borders at the Fontainebleau Hotel on September 16, 1981.

260. Specifically, Judge Hastings testified under oath at his trial as follows:

Question:	Judge, would you tell the jury why you went to the Fontainebleau Hotel on September 16th?
Answer:	As I indicated, William Borders had indicated to me that he would be at the Fontainebleau Hotel during the dinner hour and for purely social purposes he and I were going to meet expressly for the purpose of socializing . . . I know for a fact that . . . William Borders indicated to me that he would be in Miami at the Fontainebleau Hotel September 16th. And that is the primary reason I went there.

* * * *

Question:	Judge did you dine at the Fontainebleau Hotel on September 16, 1981, to show your participation in a bribery scheme?
Answer:	Absolutely not.

261. At his trial, Judge Hastings testified that on the afternoon of October 9, 1981, he called his mother and Patricia Williams in Florida from the L'Enfant Plaza Hotel in Washington, D.C.

262. Specifically, Judge Hastings testified under oath at his trial as follows:

Question:	. . . What did you do when you got down to your room?
Answer:	The very first thing I did, walked straight into the room and picked up the telephone and called my mother.
Question:	And when you called your mother, what did you learn?

Answer: When I called my mother, she was -- I do not wish to exaggerate -- I have never known her to be as hysterical as she was. It is just that simple. And I couldn't calm her down. . . .

Question: Did you make any other calls?

Answer: Yes, I did.

Question: Had Hemphill arrived at your room by this time?

Answer: No he had not.

Question: Who did you call?

Answer: I called you [Patricia Williams].

Question: All right. And what happened there?

Answer: I called you at your office at the Economic Opportunities Commission here at the Dupont Plaza Hotel and I learned you had been interviewed by the FBI and the particulars, at least in part, as to what had transpired in your interview with the FBI.

And in addition to that I learned that you had called my office and had learned that the FBI was there for the express purpose, among other things, of interviewing my staff.

* * * *

Question: You are certain that sitting in the hotel room after Mr. Pride gave you the news, that you made two long distance calls to Florida and you charged them to your room?

Answer: Right . . .

264. At his trial, Judge Hastings testified as to why, on October 9, 1981, he took a plane from Baltimore-Washington International Airport rather than Washington National Airport.

265. Specifically, Judge Hastings testified under oath at his trial as follows:

Question: Why did you not go to the airport, the nearer airport?

Answer: There was never any question in my mind but that at that time in the evening I thought that all flights that left Washington, D.C. at that particular point in time, either went through Atlanta en route to Miami, but I was absolutely certain that there were none until 10:00 p.m.

* * * *

Question: Did you consider that there might be FBI agents looking for you at the National Airport?

Answer: It was of no concern to me had there been FBI agents at the National Airport, Dallas [Dulles] or at the Baltimore Airport . . . I had no desire or design to not cooperate with any authorities.

* * * *

Question: And your thinking was there would be no flights from National Airport that would fly you non-stop from Washington National Airport--

Answer: That was my thinking.

Question: --to Miami? Even though two months ago you had taken one?

Answer: Yes, sir. That was my thinking at that particular time. I have traveled that way an awful lot, an awful lot.

266. Before departing the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings did not check on airline flight schedules to Miami or Fort Lauderdale, nor on seat availability on flights to those cities from either Washington National Airport or Baltimore-Washington International Airport.

281. In 1981, Judge Hastings was not a social acquaintance of Madeline Petty and, in fact, he did not meet her until his trial in 1983.

287. On July 11, 1981, William Borders met Judge Hastings in Fort Lauderdale, Florida, and the two of them drove to the home of Jessie McCrary where they spent the afternoon.

288. On September 20 or 21, 1981, William Borders and Judge Hastings spoke on the telephone.

X. Geographical Information

182. Washington National Airport is approximately four miles from the L'Enfant Plaza Hotel.

185. Baltimore-Washington International Airport is 32 miles northeast of the L'Enfant Plaza Hotel and approximately an hour's drive in Friday afternoon traffic.

254. Fort Pierce is approximately 60 miles north of West Palm Beach, Florida.

255. Fort Pierce is approximately 60 miles south of Melbourne, Florida.

256. Fort Pierce is approximately 115 miles from Orlando, Florida.

XI. Nagra Body Recordings

47. On September 12, 1981, at about 8:25 a.m., William Dredge, William Borders and H. Paul Rico met at the Miami International Airport.

48. On September 12, 1981, at about 8:25 a.m. William Dredge identified H. Paul Rico as Frank Romano and introduced him to William Borders.

49. On September 12, 1981, shortly after 8:25 a.m. William Borders and H. Paul Rico met out of the presence of William Dredge.

50. During their meeting on September 12, 1981 beginning shortly after 8:25 a.m., William Borders told H. Paul Rico that within ten days of Rico's paying $150,000, an order would be signed returning a substantial amount of the property Thomas and Frank Romano had lost [in the forfeiture].

51. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders wrote the following on a paper which he then showed to H. Paul Rico: "$150,000" and "within ten days a order will be signed."

52. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders told H. Paul Rico that "the other will follow", i.e., the sentences would be reduced, once Thomas and Frank Romano filed a "motion for mitigation."

53. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., in response to H. Paul Rico's request for assurances, William Borders suggested that Rico give the

money to William Dredge, and that Dredge would then hold the money until the "first part" was done, i.e., the order returning the property was signed.

54. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., H. Paul Rico rejected William Borders' suggestion that the money be held by William Dredge until the order returning the property was signed, and suggested as an alternative means of proving that the judge was in on the bribery scheme that Borders would have Judge Hastings appear at an appointed time and place.

55. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders selected Wednesday, September 16, 1981, as the date for Judge Hastings' appearance. Borders left it to Rico to select the time and place.

56. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., H. Paul Rico selected 8:00 p.m. at the main dining room of the Fontainebleau Hotel in Miami Beach, Florida as the time and place for Judge Hastings' appearance.

57. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., H. Paul Rico and William Borders agreed to meet again at the Miami International Airport on September 19, 1981, at which time Rico would make a payment on the bribery deal.

92. On September 19, 1981, William Borders and H. Paul Rico met at the Miami International Airport Hotel at approximately 10:00 a.m.

93. During their meeting on September 19, 1981, beginning at approximately 10:00 a.m., H. Paul Rico told William Borders that Judge Hastings had appeared as Borders had promised, and that Rico had the bribe money in a locker at the airport.

94. During their meeting on September 19, 1981, beginning at approximately 10:00 a.m., H. Paul Rico gave William Borders a newspaper in which there was $25,000 in cash.

95. During their meeting on September 19, 1981, beginning at approximately 10:00 a.m., William Borders and H. Paul Rico agreed that the balance of the bribe money would be paid "as soon as the other [was] done", i.e., as soon as the order returning the forfeited property was signed.

96. During their meeting on September 19, 1981, beginning at approximately 10:00 a.m., William Borders and H. Paul Rico agreed to meet again on October 3, 1981, at the Miami International Airport, at which time the final installment of the bribe money would be paid.

97. At their 10:00 a.m. meeting on September 19, 1981, at the request of William Borders, H. Paul Rico gave Borders his phone number.

98. During the meetings between William Borders and H. Paul Rico on September 12 and September 19, 1981, Rico was wearing a body recorder which recorded their conversations.

141. On October 9, 1981, when H. Paul Rico answered William Borders' knock at the door at the Twin Bridges Marriott Hotel, Borders asked Rico, "You got it with you?" Rico told him that "it" was in the room and Borders said, "Get it, I wanna take a ride."

373. On December 18, 1985, at the Miami Outboard Club, Kevin "Waxy" Gordon recorded a conversation he had with Peter Ferguson in which Ferguson suggested that Johnny Rivero was an undercover narcotics Special Agent.

XII. Other Tape Recordings

101. On October 2, 1981, H. Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to federal wiretap authorization.

103. On Friday, October 2, 1981, at approximately 3:00 p.m. William Borders was out of his law office but he arranged to have "Frank's" (H. Paul Rico's) call put through to him at another office.

104. On October 2, 1981, at 3:10 p.m. William Borders and H. Paul Rico spoke with each other by telephone and Rico informed Borders that the Romano forfeiture order had not yet been issued.

105. During their October 2, 1981 telephone conversation, beginning at 3:10 p.m., William Borders and H. Paul Rico agreed to cancel their previously scheduled meeting for October 3, 1981.

106. During their October 2, 1981 telephone conversation, beginning at 3:10 p.m., H. Paul Rico asked William Borders to call him that night with information on the Romano forfeiture order but Borders replied that he didn't know whether he would be able to "find out...because of the time" and suggested that Rico call again on Sunday.

107. On October 2, 1981, at 4:50 p.m., William Border's secretary called Judge Hastings' chambers and was told that the judge had left for the day. The call was recorded pursuant to a federal wiretap authorization.

108. On October 4, 1981, at 9:38 a.m. William A. Borders and H. Paul Rico had a telephone conversation, in which Rico inquired about the Romano forfeiture order and Borders responded that he had not been able to talk to anybody.

115. On October 5, 1981, at 4:22 p.m., William Borders and H. Paul Rico spoke to each other by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

116. During their October 5, 1981 telephone conversation beginning at approximately 4:22 p.m., William Borders told H. Paul Rico that the Romano forfeiture order had not gone out yet, but it had been "taken care of" and would probably go out that day or the first thing the next morning.

117. On October 5, 1981, at 5:12 p.m., William Borders and Judge Hastings had a telephone conversation, which was recorded pursuant to a federal wiretap authorization.

121. On October 7, 1981, at 12:19 p.m., William Borders and H. Paul Rico spoke by telephone, and the conversation was recorded pursuant to a federal wiretap authorization.

122. During their October 7, 1981 telephone conversation, beginning at approximately 12:19 p.m., William Borders told H. Paul Rico that the Romano forfeiture order had gone out the previous morning.

123. On October 7, 1981, at 7:39 p.m., William Borders and H. Paul Rico spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

124. During their October 7, 1981 telephone conversation, beginning at approximately 7:39 p.m., H. Paul Rico told William Borders that "everything [was] fine", i.e., the Romano forfeiture order had been received, and the two agreed that Rico would come to Washington, D.C. with the final bribe payment on Thursday or Friday, October 8 or 9, 1981.

125. On October 8, 1981, at 9:37 a.m., William Borders and Judge Hastings spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

126. During their October 8, 1981 telephone conversation, beginning at 9:37 a.m., Judge Hastings told Borders that he would be arriving at Washington National Airport the next morning at 10:40 on Eastern flight 130.

139. When William Borders called H. Paul Rico on October 9, 1981, Rico told Borders that he had "brought all the necessary papers." They agreed to meet at the Twin Bridges Marriott Hotel

in about an hour.

360. At 8:58 a.m. on September 6, 1985, the FBI recorded an incoming telephone call to Kevin "Waxy" Gordon from Peter Ferguson in which Ferguson said that Mayor Clark wanted to meet Gordon at "11:30 a.m. today at the Miami Outboard."

361. On September 6, 1985, in telephone calls recorded by the FBI, Kevin "Waxy" Gordon told Johnny Rivero and another individual that he would be meeting Mayor Clark that day.

366. In a telephone conversation recorded by the FBI on September 9, 1985, Kevin "Waxy" Gordon told an individual about his meeting with Mayor Clark at the Miami Outboard Club on September 6, 1985, stating that "Steve called me over there to tell me that he heard from Alcee Hastings . . . you know a Federal Judge . . . There's some rumor that I was involved with . . . ah . . .Clark, Ferguson and a councilman from Hialeah on some deal . . . "

XIII. FBI Reports

29. On September 10, 1981, at 1:29 p.m., William Dredge called William Borders at his law office and said "they [Thomas and Frank Romano] are ready to deal."

30. During the September 10, 1981, telephone conversation between William Dredge and William Borders, beginning at 1:29 p.m., Dredge arranged to meet Borders at the Miami International Airport on September 12, 1981, for the purpose of introducing Borders to "Frank Romano."

31. The FBI arranged for H. Paul Rico, a retired FBI agent, to impersonate Frank Romano.

32. FBI Special Agent William Murphy was present with William Dredge during the September 10, 1981 telephone conversation between Dredge and William Borders, beginning at 1:29 p.m.

60. On September 12, 1981, at approximately 11:00 a.m., as part of an FBI surveillance, William Borders was observed boarding Eastern Airlines flight 890, departing from Miami, Florida for West Palm Beach, Florida.

130. On October 9, 1981, at approximately 10:40 a.m., William Borders met Judge Hastings at gate 20 of the Washington National Airport.

131. After picking up Judge Hastings at the Washington National Airport on the morning of October 9, 1981, William

Borders drove with Judge Hastings to the L'Enfant Plaza Hotel, arriving at approximately 10:50 a.m.

133. On October 9, 1981, Borders and Judge Hastings left the L'Enfant Plaza Hotel at approximately 11:17 a.m. and proceeded to William Borders' car, where Judge Hastings placed a briefcase in the trunk. They then drove to the Superior Court of the District of Columbia, 500 Indiana Ave., N.W., Washington, D.C., arriving at 11:22 a.m. and departing at 11:29 a.m.; they then drove to W & W Liquors, 1549 7th St. N.W., Washington, D.C., arriving at 11:38 a.m. and departing at 11:42 a.m.; and then drove to Borders' law office at 1621 New Hampshire Ave., N.W. Washington, D.C., arriving at approximately 11:53 a.m.

134. At approximately 11:53 a.m. on October 9, 1981, Borders parked his car at the rear of his office at 1621 New Hampshire Ave., N.W., Washington, D.C.

142. On October 9, 1981, when William Borders and H. Paul Rico got into Borders' car, Rico placed a bag containing $125,000 on the seat between them.

143. On October 9, 1981, the FBI pulled over the car being driven by William Borders as soon as Borders started to drive away from the parking lot of the Twin Bridges Marriott Hotel in Arlington, Virginia. When Borders saw the FBI car, and heard its siren, he said to Rico, "We're busted."

144. On October 9, 1981, at 12:40 p.m., William Borders was placed under arrest by FBI agents, and transported back to room 103 of the Twin Bridges Marriott Hotel.

145. Following his arrest on October 9, 1981 at 1:18 p.m., William Borders requested and received permission to telephone his attorney John Shorter. He then made arrangements for his attorney to come to the Twin Bridges Marriott Hotel.

146. On Friday, October 9, 1981, at 1:31 p.m., attorney John Shorter arrived at room 103 of the Twin Bridges Marriott Hotel. At 1:34 p.m. and 1:42 p.m., William Borders and Shorter spoke privately, and thereafter again spoke privately for several more minutes.

147. At 1:56 p.m. on October 9, 1981, William Borders was escorted by FBI agents from room 103 of the Twin Bridges Marriott Hotel to the Washington FBI field office. At 3:40 p.m., FBI agents took Borders to the United States Magistrate's Office in Alexandria, Virginia. Following a hearing before United States Magistrate W. Harris Grimsley, Borders was remanded to the custody of the United States Marshall.

148. On Friday, October 9, 1981 at 1:55 p.m., FBI Special

Agents Dale Bird, Carol Skiles and William Murphy left the Twin Bridges Marriott Hotel for the law office of William Borders at 1621 New Hampshire Ave., N.W., Washington, D.C. They arrived at the office at 2:25 p.m. and found the front door locked.

149. Following the arrest of William Borders, in the mid-afternoon of Friday, October 9, 1981, the Washington, D.C. FBI field office advised Miami FBI personnel to begin interviews of Patricia Williams and the personnel in Judge Hastings' chambers, and to serve a subpoena for office records in Judge Hastings' chambers.

150. Agents of the FBI conducted interviews on October 9, 1981 of persons working in Judge Hastings' Miami and Fort Lauderdale chambers, including Marilyn Carter, Joann Tyson, Barbara Katzen, Daniel Simons, Jeffrey Miller and Alan Ehrlich.

152. FBI agents arrived at Judge Hastings' chambers in Miami at approximately 2:50 p.m. and remained there until approximately 5:15 p.m.

153. On October 9, 1981, FBI Special Agents Wendy Loucks and Lawrence Harrigan proceeded from the Miami FBI office to the office of Patricia Williams, Suite 412, DuPont Plaza Center, in downtown Miami, Florida, arriving at about 2:50 p.m. After locating Ms. Williams, the agents began the interview at approximately 3:00 p.m. and continued the interview until about 3:50 p.m.

196. Prior to being interviewed by the FBI on October 9, 1981 in Lauderhill, Florida, Judge Hastings had not contacted anyone in the FBI that day.

318. On August 21, 1985, Johnny Rivero introduced Kevin "Waxy" Gordon to "Gino", an undercover FBI Special Agent posing as a Houston-based entrepreneur who wanted to set up the amusement operation. Gino was being impersonated by FBI Special Agent Richard J. Giannotti.

XIV. 1985 Wiretap Application and Progress Reports

302. The U.S. Attorney's Office presented Judge Hastings with weekly progress reports, dated July 22 and 29, and August 5 and 12, 1985, describing the information obtained from the wiretap authorized on July 15, 1985 and information obtained from other investigative techniques.

303. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the First Progress Report on July 22, 1985, at which time Judge Hastings reviewed and signed the report and entered an order placing under seal all the

information contained in the report.

304. Assistant U.S. Attorney Martinez met with Judge Hastings with respect to the Second Progress Report on July 29, 1985, at which time Judge Hastings reviewed and signed the report and entered an order placing under seal all the information contained in the report.

306. Assistant U.S. Attorney Roberto Martinez met with Judge Hastings with respect to the Third Progress Report on August 5, 1985, at which time Judge Hastings signed the report and entered an order placing under seal all the information contained in the report.

308. Assistant U.S. Attorney Jon A. May met with Judge Hastings with respect to the Fourth Progress Report on August 12, 1985.

310. Judge Hastings signed the Fourth Progress Report on August 13, 1985 and at that time entered an order placing under seal all the information contained in the report.

311. Assistant U.S. Attorney Jon A. May and FBI Case Agent Geoffrey Santini met with Judge Hastings with respect to the Fifth Progress Report on August 15, 1985, at which time Judge Hastings signed the report and entered an order placing under seal all the information contained in the report.

312. The July 15, 1985 wiretap had been authorized by Judge Hastings for 30 days. On August 15, 1985, in a handwritten statement on the last page of the Fifth Progress Report, Judge Hastings authorized a one day extension of the July 15, 1985 wiretap.

315. On August 15, 1985, Assistant U.S. Attorney Jon A. May and FBI Case Agent Santini met with Judge Hastings with respect to an application for a 30 day extension of the wiretap and a supporting affidavit.

317. On August 15, 1985, Judge Hastings signed the application for a 30 day extension of the wiretap and entered all the necessary orders, including an order placing under seal all the information contained in the documents that had been presented to him by Assistant U.S. Attorney Jon A. May and FBI Case Agent Geoffrey Santini on August 15, 1985.

319. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report after the extension of the wiretap on August 22, 1985.

321. Judge Hastings signed the First Progress Report after the extension of the wiretap on August 22, 1985 and at that time

entered an order placing under seal all the information contained in the report.

322. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap on August 29, 1985.

328. Judge Hastings signed the Second Progress Report after the extension of the wiretap on August 29, 1985, and at that time entered an order placing under seal all the information contained in the report.

334. Judge Hastings signed the Third Progress Report after the extension of the wiretap on September 5, 1985 and at that time entered an order placing under seal all the information contained in the report.

XV. Miscellaneous Proof

2. William Borders participated in Judge Hastings' federal investiture ceremony.

3. In 1981, William Borders was an attorney practicing in Washington D.C.

33. From March through October 1981, Cynthia Rogers was a secretary and receptionist at the law offices of William Borders.

58. At the time of the September 12, 1981 meeting between H. Paul Rico and William Borders, Borders had no official connection with the Romano case, nor was he a member of the Florida bar.

59. In 1981, in the United States District Court for the Southern District of Florida, the official files of criminal matters were kept in the chambers of the judge assigned to the case rather than in the clerk's office.

62. On September 12, 1981, David L. Thomas, a cousin of William Borders, met Borders at the West Palm Beach airport.

63. On September 12, 1981, David L. Thomas drove William Borders from West Palm Beach, Florida to Fort Pierce, Florida.

64. On September 12, 13 and 14, 1981, a family reunion involving the family of William Borders was scheduled in Fort Pierce, Florida.

65. Prior to September 10, 1981, William Borders was planning to attend his family reunion.

66. The drive by David L. Thomas and William Borders from West Palm Beach, Florida to Fort Pierce, Florida on September 12, 1981, took about an hour and twenty minutes.

76. From March through October 1981, William Borders was a social acquaintance of Madeline Petty, and could on occasion be reached at her residence.

78. The purpose of the September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, was to attend the Sugar Ray Leonard - Tommy Hearns championship fight.

79. The September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, had been planned since at least September 1, 1981.

80. William Borders did not ask Madeline Petty to keep secret the fact that they were planning to attend the championship fight in Las Vegas, Nevada on September 16, 1981.

81. William Borders was a boxing fan and attended virtually every championship fight that was held in the continental United States.

82. In 1981, it was well known among friends of William Borders that he was a boxing fan and attended virtually every championship fight held in the continental United States.

86. At some time prior to 7:45 p.m. on September 16, 1981, Judge Hastings made reservations for two for dinner at the Fontainebleau Hotel main dining room on September 16, 1981.

113. Daniel Simons, one of Judge Hastings' law clerks, overheard the conversation between Jeffrey Miller and Judge Hastings on the morning of October 5, 1981, concerning the Romano forfeiture order. According to Simons, Judge Hastings seemed somewhat disturbed that Miller had not finished the Romano forfeiture order.

135. H. Paul Rico, posing as Frank Romano, arrived in Washington, D.C. on October 8, 1981, for the purpose of delivering the remainder of the bribe payment to William Borders.

138. On October 9, 1981, H. Paul Rico was staying in room 103 at the Twin Bridges Marriott Hotel, Arlington, Virginia, in which the FBI had installed video and audio equipment.

140. On October 9, 1981, William Borders left his office at approximately 12:02 p.m. and drove to the Twin Bridges Marriott Hotel, arriving at H. Paul Rico's room less than an hour after they had talked on the telephone.

151. In October, 1981, Patricia Williams was an attorney employed by the Equal Employment Opportunity Commission in Miami, Florida, and the fiance of Judge Hastings. She resided at 2401 N.W. 43rd Terrace, Lauderhill, Florida.

156. On October 9, 1981, the following attorneys had offices at 1621 New Hampshire Ave., N.W., Washington, D.C.: William Borders, Dudley Williams, James Cobb and Robert L. Bell.

179. By around 3:00 p.m. on October 9, 1981, Judge Hastings was aware that the FBI in Washington, D.C. wanted to interview him.

198. On October 9, 1981, Mildred Hastings lived with her son, Alcee L. Hastings, at 2970 N.W. 55th Ave., Apt. 1-B, Lauderhill, Florida. Two telephone numbers were provided to that residence. Telephone number (305) 486-0733 belonged to Mildred Hastings, and telephone number (305) 731-8176 was used by Judge Hastings.

210. During his representation of Judge Hastings, Joel Hirschhorn, counsel for Judge Hastings from January 12, 1982 to March 3, 1982, never saw any letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings.

218. Andrew Mavrides, an attorney then representing Judge Hastings, attended William Borders' trial in March 1982, as an observer, and ordered and received copies of the trial transcript.

223. The prosecution in United States v. Hastings submitted the letters produced in December 1982 by Judge Hastings to forensic experts in an attempt to date the creation of the letters. However, the paper and ink employed were such that it was not possible to conclude whether the letters were written on October 5, 1981, or at a subsequent time.

224. Tests conducted by forensic experts in 1982 and 1987 to reveal impressions other than visible writing on the letters produced in December 1982 by the defense in United States v. Hastings revealed nothing intelligible.

263. Patricia Williams wrote and sent a letter dated October 14, 1981, to Judge Hastings that stated as follows:

2401 N.W. 43rd Terrace
Lauderhill, Florida 3313
October 14, 1981

Honorable Alcee L. Hastings
United States District Judge
2970 N.W. 55th Avenue
Apartment 1-B
Ft. Lauderdale, Florida 33313

Dear Judge:

I want you to know that I felt pride and joy as well as horror as a result of our telephone conversation on Friday, October 9th, when you called me from Baltimore and indicated that you required my legal assistance in confronting allegations of bribery which you had just learned were being directed towards you. I am especially pleased to know that you have since invited the legal expertise of Jesse McCrary and Delano Stewart. I feel certain that the best legal treatment conceivable will be administered to your case by this team.

Yours truly,

Patricia Graham Williams

cc: Jesse McCrary
Delano Stewart

289. Local 1922, located in Miami, Florida, is a chapter of the International Longshoremen's Association.

290. WAXY are the call letters of a radio station in Miami, Florida.

291. In 1986, Stephen Clark had been Mayor of Dade County, Florida for a total of 14 years, from 1970 to 1972, and from 1974 to 1986.

292. Peter Ferguson was Mayor Clark's campaign manager in 1985 and 1986, among other years. At that time he was also Marketing Director for Fiscal Operations of the Port of Miami.

293. Kevin "Waxy" Gordon was the zoning code enforcer for the city of Surfside, Florida in 1985 and early 1986, among other

years. Sometime prior to 1985, Gordon had retired from his position as a code enforcement officer for the city of Miami, Florida.

294. In 1986, Mayor Clark had known Kevin "Waxy" Gordon since the late 1960s.

295. In 1986, Peter Ferguson had known Kevin "Waxy" Gordon for approximately 15 years.

301. 18 U.S.C. 2517(5) requires judicial approval of the investigation of criminal activity discovered as a result of the wiretap if that criminal activity was not included in the original application for the wiretap.

346. Judge Hastings' sole source of the information about the actions and statements of Kevin "Waxy" Gordon and Gordon's relationship with Mayor Clark were the applications, affidavits and progress reports relating to the wiretap initially authorized by Judge Hastings on July 15, 1985 and which he extended on August 15, 1985.

347. In 1985, the Metropolitan Miami Action Plan ["MMAP"] was a community service organization promoting black-white relations in the Miami, Florida area.

348. On September 6 and 7, 1985, MMAP held its Third Annual Conference at the Hyatt Regency Hotel in Miami, Florida.

351. On September 6, 1985, the breakfast meeting of the MMAP Third Annual Conference was held in the Regency Ballroom on the Terrace Level of the Hyatt Regency Hotel.

352. According to the MMAP Third Annual Conference program, the breakfast meeting on September 6, 1985 was scheduled to begin at 8:30 a.m.

353. According to the MMAP Third Annual Conference program, registration for the conference began at 7:30 a.m. on the Terrace Level of the Hyatt Regency Hotel.

354. During registration for its Third Annual Conference, MMAP served a continental breakfast in the Promenade area on the Terrace Level of the Hyatt Regency Hotel.

372. On November 20, 1985, Kevin "Waxy" Gordon executed a plea agreement in which he agreed to cooperate with the FBI and U.S. Department of Justice.

374. On February 17, 1986, Kevin "Waxy" Gordon died after suffering a heart attack.

375. On March 6, 1986, Mayor Clark took a polygraph test administered by the FBI. Mayor Clark was asked "Are you lying when you say Judge Hastings told you to 'Stay away from Kevin Gordon?'" Mayor Clark responded "No." This answer was determined to be truthful.

376. In March 1986, Mayor Clark and Special Agent Christopher Mazzella testified before a grand jury regarding the disclosure of confidential wiretap information.

377. On May 20, 1986, Eric Holder of the Public Integrity Section of the U.S. Department of Justice called Judge Hastings in order to interview him.

378. On May 20, 1986, in the telephone call with Eric Holder, Judge Hastings declined to be interviewed and stated that Holder would have to do whatever he planned to do without Judge Hastings' assistance and that he knew how the U.S. Department of Justice worked. Judge Hastings also asked Holder if he knew who Judge Hastings was.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron /LEF
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

March 31, 1989

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

Misc. No. 89

In re: Judge Alcee L. Hastings

On Application for Transfer
of Sealed Wiretap Materials to
the United States House of Representatives

The House of Representatives has requested this court to release to it certain sealed wiretap materials for its use in the pending impeachment proceedings of Judge Alcee L. Hastings.

Judge Hastings has filed a response objecting to the request made by the House of Representatives. He asserts that proper procedure requires the House to ask the Senate to request the transfer of the sealed material to the Senate, which is the proper body to determine what disclosure of the material can be made.

The Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials authorize the issuance of subpoenas upon application of the House managers or the person impeached. The Rules, however, do not prescribe the exclusive procedure that a party must follow to obtain evidence.

For reasons adequately stated in In re Grand Jury Proceedings, 841 F.2d 1048 (11th Cir. 1988) (special panel), and

EXHIBIT C

In re Request for Access to Grand Jury Materials, 833 F.2d 1438 (11th Cir. 1987) (special panel), the court deems it appropriate to grant the request of the House of Representatives.

The clerk of this court is authorized to deliver to the Federal Bureau of Investigation the recordings pertaining to the interception of the telephones at the law offices of William A. Borders, Jr., and at the home of William A. Borders, Jr., in Misc. No. 81-0202. The Federal Bureau of Investigation is directed to take custody of these records under seal and deliver them to the House of Representatives of the United States c/o Alan I. Baron, Esq., Special Counsel to the House Managers, Room 361, House Annex 2, 2nd & D Street, S.W., Washington, D.C. 20005.

This order does not preclude Judge Hastings from seeking disclosure of the tapes or from objecting to their admission in evidence in accordance with the Rules of the Senate.

John D. Butzner, Jr.
Senior Circuit Judge
Sitting by Designation

Entered: March 20, 1989

In The
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,

plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,

respondent.

REPLY TO HOUSE MANAGERS' REPORT AND RECOMMENDATIONS ON PENDING PRE-TRIAL MATTERS

How much time, money, and discovery must be allowed to enable respondent and his counsel to prepare for trial? Why? Those are the central questions that emerge from the memoranda on pre-trial matters submitted by counsel for the parties and from their meeting with the Chairman and Vice Chairman on April 4, 1989. Those are the principal questions addressed in this reply.

A.

The short answer is that counsel for respondent must now be given the time, resources, and power to do what the House and its staff refused to do during its inquiry. More than two years ago, counsel for Judge Hastings specified, in considerable detail, the areas that had to be examined if the House inquiry was to produce a record that was complete and balanced. More than ten months ago, counsel submitted a list of the witnesses that named those who must be called and examined to develop the testimony he needed and submitted two memoranda specifying the information that only their testimony could provide. The House subcommittee did not pursue the inquiries and refused to call any of the witnesses. The House managers have now disclosed that its staff examined, but did not retain copies of, the files most likely to contain documentary evidence bearing upon these issues.

By their submissions, the House managers ask the Senate to ignore these deficencies and to deny respondent the time, resources, and power that would be necessary to repair them. The views expressed at the meeting on April 4, 1989, suggested that the Committee was unaware of the background for respondent's requests and, for that reason, that the views expressed by the managers were being accorded some credibility and weight. In order that the Committee may be properly informed, we summarize the background and its bearing on the issues at hand here.

1. For more than two years, Judge Hastings and his counsel have diligently sought the information that now must be obtained through discovery. In September 1986, the Judicial Conference authorized respondent's principal counsel to examine, but not copy, the record compiled by the judicial investigating committee. Counsel conducted such examinations as were feasible given the restrictions imposed on his time and access. Based upon that examination, counsel prepared a 189-page provisional report that analyzed the evidence available and specified the areas that required further investigation.

The provisional report identified new evidence revealed in that record while indicated that the judge may well have been the innocent victime of three related schemes.

> (a) First, a scheme by Joseph Nesline, William Dredge, and William Borders to "market" Borders's claimed power to "fix" cases before several federal judges to their criminal associates;
>
> (b) Second, a scheme by Dredge and/or Nesline to terminate Borders's activities without risk to themselves after the discovery that Borders was a "rainmaker" who did not even have the power to "fix" a continuance in Judge Hastings' court; and
>
> (c) Third, a scheme within the Justice Department and the FBI to employ a sting operation to implicate Judge Hastings sufficiently to assure that he would be unable to continue presiding in two cases of national importance that were pending before him, without regard to his innocence or guilt in fact.

The provisional report also identified new evidence that tended to corroborate the testimony the Judge had given at the 1983 trial and to undermine the credibilty of that offered by the government.

The provisional report was delivered to the House in January 1987, more than two years ago and more than two months before its inquiry began. At the outset of the inquiry and until they were rebuffed, respondant and his counsel persisted in their requests that the House subcommittee pursue the lines of inquiry identified in the provisional report in order that the necessary evidence might be obtained, examined and evaluated. Ten months ago, at the hearings before the House subcommittee responsible for the conduct of the inquiry, counsel for respondent submitted a provisional witness list which identified persons who should be called and the issues to which they could provide relevant information. He submitted memoranda which identifies the information those witnesses could provide and explained its relevance.

The House may not now be permitted to claim that counsel for respondent have not diligently sought the information necessary to support the claims made in the provisional report and reiterated throughout the House inquiry and now presented here. The House subcommittee did not call any of the witnesses requested. The files and documents identified in the provisional report have not been produced. The House managers have now disclosed that the inquiry staff examined, but did not obtain or retain copies of, the files most likely to obtain information relevant to these issues -- the Justice Department's investigative and trial files and the "working files" developed by John Doar in the course of his work for the judicial investigation committee.

2. Counsel for respondent cannot effectively continue trial preparation or fully assess the scope of the additional discovery required until the House managers produce copies of the documents respondent has requested. Prior to the April 4th meeting, the House had submitted (a) a "Proposed Stipulation of Documents" which identified documents and other materials the House had gathered and thought potentially material to its case, and (b) an inventory of "Documents Made Available to the House of

Representatives" identifying categories of material received and their sources. At the meeting on April 4, the managers distributed lists of "I. Documents Provided Judge Hastings By the House;" "II. Documents in House Files To Which Judge Hastings Has Been Granted Access;" and "III. Documents in House Files Not Made Available." Those documents alone are sufficient to illustrate the inadequacies to the House's production to date and the effect of those inadequacies on the ability of respondent's counsel to prepare properly for trial.

a. The lists are inaccurate and incomplete. The House has not provided Judge Hastings with copies of all documents specified under item 4 on list I, and many that have not been produced are significant. The House has not included on any of its lists the statements and depositions which were taken during the course of its inquiry and thereafter. The House has yet to disclose the identities of the persons whom its staff has interviewed or deposed, and thus we do not yet know the extent nor volume of materials in this category. As the House managers concede, they must at some point produce the statements and depositions of witnesses they intend to call to premit counsel to prepare proper cross-examination. The House managers have yet to acknowledge that respondent's counsel must also examine the statements and depositions of those who the House does not intend to call in order to be able to formulate a proper witness list and determine what additional depositions should be taken.

b. "Access" is not enough to enable respondent's counsel to prepare for trial. The House's second list identifies documents to which Judge Hastings has been granted "access". Had funds been provided, the House's failure to provide copies would have been little more than a substantial irritant. Counsel would have assembled the necessary team of paralegals and instructed them to copy all of the documents for counsel's use, had funds been available to finance such a procedure. Those funds have not been available; Judge Hastings principal counsel are in Miami; and the demands imposed upon them in meeting the briefing schedules established by the Rules Committee, the Senate, and this Committee have not permitted them to squander their time on enterprises such as that.

The problems created are significant. For example, the House managers have listed a mass of telephone records on their Proposed Stipulation of Documents. These amount to more than 1000 pages. The House has claimed that these can be analyzed to establish a "pattern of contacts" consistent with their conspiracy theory. Based upon the limited access granted in 1986, counsel for respondent determined and claimed that those same records also established patterns of contacts that were consistent with innocence and that tended to corroborate testimony the judge provided at trial. Copies of those records have not been given to respondent's counsel. When they are, either he or appropriate paralegal staff will have to complete the analyses necessary to support his claims. That is a tedious and time-consuming task, but one the House's claim has made essential.

Every document on List II was a part of the record compiled by the Judiciary in its investigation. Fairness required that Judge Hastings be given a copy of that record, the entire record, at the time when the judicial investigating committee submitted its report and recommendations in August, 1986 and certainly before the Judicial Conference made its decision to certify the report and recommendations to the House. Fairness required that the House subcommittee supply Judge Hastings with a complete copy at the outset of its inquiry and certainly before its hearings in May 1988. Fairness requires that the House be directed to provide a copy now and that respondent be afforded time to conduct the necessary analyses.

c. Prompt production of the remainder is also necesary. List III specifies two categories of documents that have not been made available -- the working files of John Doar, counsel to the judicial investigating committee and FBI investigative files. At the meeting on April 4, the managers advised that the FBI had expressed no objection to the disclosure of those materials and had taken the position that Executive Branch interests were adequately protected by redactions that had been made before these materials were delivered to the House. The managers also reported that Mr. Doar had expressed some general reservations about the production of the working files, but had not raised specific objections or grounds for nonproduction. In those circumstances, there can be no justification leaving production at the discretion of the House.

Respondent's need for these files should be apparent. The matters in Mr. Doar's 225 witness files will enable counsel for respondent to avoid re-examining ground already adequately surveyed and to concentrate on the most probable sources for relevant information. Moreover, the materials include analyses of telephone contacts prepared by Mr. Doar's paralegals and other material that might greatly speed preparation of respondent's case and relieve his counsel of burdens that should be unncessary. The House and its well-funded staff have had the benefits of this work-product to aid them in preparing for trial for almost a year and a half. Those materials and time to use them should be made available to counsel for respondent now.

The materials in the FBI files are even more crucial. Those files are likely to constitute the principal source from which evidence relevant to the Dredge-Nesline-Borders theories may be identified and developed. They are also the files most likely to contain the information necessary to enable counsel to develop the concerns that call into question the credibility of FBI witnesses and documents the managers have declared they intend to present at trial.

d. Respondent must now be granted the subpoena power and time to examine and obtain copies of the materials the House examined but did not copy. The managers now disclose that they "have also reviewed, but at this time do not have copies of, Department of Justice investigative and trial files pertaining to the bribery conspiracy case and the investigation into the disclosure of confidential wiretap information." (List III, Note; emphasis supplied.) The provisional report identified those materials as crucial to any fair inquiry and had detailed the basis for their relevance even before the House began its inquiry. For example, Steven Allen, the Assistant United States Attorney who had prosecuted Dredge and who had participated in the plea negotiations that led to Dredge's participation in Operation Apple Eye, testified before the judicial investigating committee. Mr. Allen reported that the note and materials he maintained in his files on the case were of such importance that District Judge Frank Kaufman, the judge who had supervised the negotiation and approved the plea agreement, had urged that the file be transmitted to the Justice Department so that the information could be used in future proceedings he thought even then might necessary. That is apparently the kind of material which the House thought it appropriate to examine, but of which it did not find it necessary to make or retain copies. That is precisely the kind of material that must now be produced for respondent's review and use. The House also reports that it examined but did not copy all Mr. Doar's files.

Fairness requires that respondent and his counsel be granted access to the same base of materials in preparing his defense that the managers examined in order to obtain material to prepare the prosecution side of the case. Because the House has returned, destroyed, or chosen not to copy some of these materials, fairness requires that they now be subpoenaed from their original sources so that counsel for respondent may examine them and obtain copies of the materials necessary for his defense.

3. Respondent must be permitted to depose the Justice Department and FBI officials whom he asked the House to call and who were the officials who managed the investigations and prosecution that provided the basis for the articles of impeachment. At the meeting on April 4, counsel for respondent were invited to provide such further information as was feasible concerning the witnesses whose testimony must be obtained and examined in order to assess the conduct and credibility of those who managed the investigations and prosectution. That information was submitted to the House, and it is resubmitted here.

Respondent submitted a provisional witness list to the House identifying the persons whom he believed should be called to create a fair and balanced record. He also submitted several memoranda describing the information those witnesses could provide in some detail. The provisional witness list identified twenty-four Justice Departnmment and FBI officials who had paticipated in or managed the investigations and prosecution, most of whom had never been examined. The memoranda identified the questions that need to be addressed and decribed the sources from whom the necessary information must be obtained. Those memoranda also demonstrated the relevance of those inquiries to issues the Senate must now resolve. The relevant portions of the witness-list and two of the memoranda submitted to the House subcomittee are attached to this reply as Exhibits A, B, and C.

Respondent proffers these materials as a provisional list of the witnesses who must now be deposed and examined here. Counsel will be pleased to respond to any questions from the Committee concerning the roles these persons played and the information that each is expected to provide.

B.

Respondent must now be afforded time, funds, and access to the subpoena power to enable his to redress the imbalances that the House has created. Time and funds are necessary if respondent is to provide his counsel with the resources necessary to analyze and evaluate the portions of the evidence the House has thus far withheld. Time, funds, and the subpoena power are necessary to enable his counsel to obtain, analyze , and evaluate the documents and testimony which the House refused to gather or preserve. In view of the work that needs to be done, the time and funds that respondent has requested are modest in any event and all the more so when compared the time and funds the House has consumed in preparing its case for trial.

Respondent has submitted his view on the other pre-trial matters that are pending and will address them further at the hearing next week. Respondent submits, however, that these are matters of lower priority and matters that may be more readily and fairly be resolved after his counsel have a fair opportunity to prepare. Whether that opportunity will be provided is the central issue the Committee must presently decide.

Respectfully submitted,

Patricia Graham Williams
Miami, Florida

Terence J.Anderson
Coral Gables, Forida

Robert S. Catz
Cleveland, Ohio

Counsel for
United States District Judge Alcee L. Hastings

June 1, 1988

To: Members of the Subcommittee on Criminal Justice of the Committee on the Judiciary of the House of Representatives

Re: Hearings in the Matter of the Impeachment Inquiry Concerning
United States District Judge Alcee L. Hastings
May and June 1988

The Provisional Witness List

The Subcommittee has undertaken to conduct a full, fair, and impartial inquiry. The Subcommittee asked us to identify witnesses who should be called to aid the Subcommittee in that undertaking. On May 26, 1988, we submitted Judge Hastings's Provisional Witness List (the "Provisional List").[1] The purpose of this memorandum is to specify the nature of the information these witnesses could supply and to explain why such information is necessary for the record of the kind that the Subcommittee ought to create.

We emphasize the provisional nature of the list. We believe that most of the information sought could and should have been gathered in the prehearing phase of the inquiry. We believe that proper prehearing depositions might have eliminated any need to call many and perhaps most of the persons listed and, indeed, might have eliminated the need to call some of those from whom the Subcommittee has already heard. We also note that the list would have to be far longer were the Subcommittee to examine all of the legitimate issues posed by the Provisional Report.

---

[1] A revised copy of that list is submitted with this memorandum. Spelling errors have been corrected; additional organizational affiliations have been inserted; and additional names have been added.

3. *Justice Department lawyers who made decisions affecting United States District Judge Alcee L. Hastings*. The Subcommittee should hear from those in the Justice Department chain of command for several reasons. First, the decision to conduct the inquiry primarily on the basis of a documentary record makes it important to assess the credibilty of the documents generated by the executive branch which were obtained and used as substantive evidence by the Investigating Committee. Second, two decisions make it clear that an accounting is due. Why did the Department decide to include Judge Hastings as a target in July 1981 when the Department had no basis for an articulable suspicion that he was involved? Why did the Department and the FBI decide to arrest Borders rather than "letting the money run" at a time when the only known circumstances implicating Judge Hastings were marginal at best--that he had had dinner at the Fountainebleau Hotel and that he had issued an order which was compelled by precedent? Third, subsequent decisions raise further questions. For example, if this was a legitimate prosecution, why was "sensitive information" concerning Dredge and the charges against Judge Hastings immediately made available to the press? So, too, why did the prosecutors oppose Judge Hastings's use of the rainmaking defense when they had evidence that in fact Borders was a rainmaker?

The responses to these inquiries are also related to subsequent events. The record on the allegations relating to Mayor Clark will make it clear, if it has not already made it clear, that the Justice Department launched a major attack upon Judge Hastings based upon what was, at best, a shoddy and incomplete investigation, and, at worst, a further deliberate effort to contrive a record that might further efforts to drive him from office or induce the House to seek his removal.

A central question this Subcommittee must resolve is whether the removal of Judge Hastings has become a covert objective of the Justice Department and, if so, when it so became. Any evidence or documents generated in such an effort must be viewed with appropriate suspicion, and their weight must be discounted. The witnesses identified in this category are those present or former attorneys who have played roles in these decisions.

4. Agents of the FBI who made or participated in decisions affecting United States District Judge Alcee L. Hastings: We are rather confident that the record compiled in these hearings concerning the Mayor Clark allegations will provide clear and convincing evidence that supports one of two conclusions. Either the quality of the FBI's investigative abilities has declined to something approximating that associated with the Keystone Cops, or the effort to get Judge Hastings has been spurred by something far more sinister than a legitimate desire to see that the laws are faithfully executed. If we are correct, fairness to the FBI as well as the need to resolve the question will require that those who have participated in the game be called to account for their respective roles.

Quite apart from our view of what the record will show, it is clear on the record to date that the Subcommittee should scrutinize the conduct of the FBI carefully. Agents of the FBI participated in the decisions described above from the outset of the 1981 investigation through the conclusion of the 1983 trial

Agent Murphy aided the Investigating Committee throughout its hearings. The Investigating Committee Record contains numerous FBI telexes and FBI 302 memoranda which provide hearsay accounts of what others said. The Investigating Committee Report relies upon these hearsay accounts as substantive evidence. The Subcommittee to date has evidenced a similar willingness to rely on secondary accounts. For that reason, the credibility of these accounts is important. Against that background, the need for information not included in the Investigating Committee Report or in the Statement of Information should be apparent. The Provisional List includes those FBI officials who did participate or should have participated in decisions material to the inquiry.

* * *

Before The

Subcommittee on Criminal Justice of the
Committee on the Judiciary of the House of Representatives

Hearings in the Matter of the Impeachment Inquiry Concerning
United States District Judge Alcee L. Hastings

JUDGE HASTINGS'S REVISED PROVISIONAL WITNESS LIST

* * *

Justice Department lawyers who made decisions on matters affecting United States District Judge Alcee L. Hastings:

Rudolph W. Giuliani, former Associate Attorney General, United States Department of Justice

William F. Weld, former Assistant Attorney General, United States Department of Justice

Gerald McDowell, Chief, Public Integrity Section, Criminal Division, United States Department of Justice

Robert Richter, former Deputy Chief, Public Integrity Section, United States Department of Justice

Reid Weingarten, former attorney for Public Integrity Section, United States Department of Justice

William Hendricks, Deputy Chief, Public Integrity Section, United States Department of Justice

John Campbell, attorney, Public Integrity Section, United States Department of Justice

Eric Holder, attorney, Public Integrity Section, United States Department of Justice

S. Michael Levin, former Chief, Miami Strike Force, United States Department of Justice

Martha Rogers, former attorney, Miami Strike Force, United States Department of Justice

John Owens, former attorney, Miami Strike Force, United States Department of Justice

Atlee Wampler, former United States Attorney for the Southern District of Florida

Steve Allen, former United States Attorney for the District of Maryland

James Deckhart, former attorney, Miami Strike Force, United States Department of Justice

Agents of the Federal Bureau of Investigation who made or participated in decisions affecting United States District Judge Alcee L. Hastings:

William Webster, former director, Federal Bureau of Investigation

Floyd I. Clark, Assistant Director, Federal Bureau of Investigation

John Kelly, Unit Chief, Federal Bureau of Investigation Headquarters

Sean Hilly, Supervisory Special Agent, Federal Bureau of Investigation Headquarters

Robert Foster, Special Agent, Federal Bureau of Investigation, Washington, D.C.

Walter Schemplein, Supervisory Special Agent, Federal Bureau of Investigation Headquarters

John P. O'Neill, Supervisory Special Agent, Federal Bureau of Investigation Headquarters

Anthony Amorso, Special Agent in Charge, Federal Bureau of Investigation, Miami office

Christopher Mazzella, Special Agent, Federal Bureau of Investigation, Miami office

Geoffery Santini, Special Agent, Federal Bureau of Investigation, Miami office

* * *

June 3, 1988

To: Members of the Subcommittee on Criminal Justice of the Committee on the Judiciary of the House of Representatives

Re: Hearings in the Matter of the Impeachment Inquiry Concerning
United States District Judge Alcee L. Hastings
May and June 1988

A Further Proffer and a Request

* * *

II.

The remaining witnesses from whom the Subcommittee should seek testimony depends upon whether the Subcommittee intends to rely upon the records compiled by the Justice Department, the FBI, and the Investigating Committee as substantive evidence bearing upon its decision whether to recommend that Judge Hastings be impeached. If it does, then any improper motives or biases that may have influenced the records and recommendations submitted by those agencies must be carefully examined as factual issues in this inquiry. Such an examination would be necessary in order to assess the credibility of the record, and thus of the "evidence," before the Subcommittee.

On the other hand, we are satisfied that the record already contains sufficient information to enable us to illustrate and rainmaking schemes. The reliability of Dredge's information concerning Borders was independently corroborated by Borders's movements and contacts. Moreover, as Agent Murphy confirmed, the FBI's Washington office had an ongoing investigation into similar allegations against Borders. Second, the government knew that the informant's sole ground for believing that Judge Hastings was an active participant was false. There had been no sua sponte continuance in the Romano case. Moreover, as Agent Murphy also confirmed, there was no information in the FBI's files to indicate that Judge Hastings was the kind of person who would participate in such a scheme or who was vulnerable to corrupt financial offers. The question is thus posed, "Why Hastings?"

The record makes it clear that there were two cases of significant importance to the Justice Department pending before Judge Hastings at the time the decision to initiate the investigation was made. We believe the evidence would show that the random assignment of these cases to Judge Hastings had caused significant concern among Justice Department officials.[3] The Investigating Committee Record does not include any testimony on the point or even demonstrate that those who must have made the decision were asked the necessary questions. Messrs. Guliani, McDowall, Wampler, and Levin would appear to be the persons who would have been consulted and have had a role in these decisions.

---

[3] Against this background the decision to insist only upon a dinner at the Fountainebleu as the principal indicator of the judge's involvement, with no specification of additional identifiers such as a specific tie, ordering a bottle of champagne, etc., provides additional ground for suspicion.

2. Why did the Justice Department and the FBI plan to arrest Borders at the Twin Bridges Marriott rather than letting him take $125,000 payoff so that Judge Hastings's innocence or guilt might have been established? The members have expressed concern about this decision, and in our view the responses given have been disingenuous at best. We believe that the participants in that decision would testify that, rather than a simple application of policy, the decision precipitated significant debate and that the views of line-prosecutors and others were overruled. We also believe that if the Subcommittee called former federal prosecutors with experience in such matters, they would confirm that this was an extraordinary decision that is not satisfactorily explained by any of the reasons provided to date. We have identified such an expert, Bernard Panetta, Esq., and are seeking to identify others. We expect to submit a specific proffer on this point.

3. Why was there such massive disclosure of sensitive information likely to endanger an FBI informant, Dredge, immediately after Borders arrest and what efforts were made to identify and sanction the sources of these leaks? The basic facts are reflected in the Investigating Committee Record. Beginning on the afternoon on October 9, 1981, and extending thereafter, there were massive disclosures of information concerning the investigation into the alleged conspiracy between Borders and Judge Hastings. The disclosures identified the [illegible] informant Dredge and place him in such apparent danger

that Judge Frank Kaufman in Baltimore, who had approved the secret plea agreement, expressed his outrage and concern to Steve Allen, the local Assistant United States Attorney who had participated in the plea bargain. The leaks had the immediate effect of forcing the early reassignment of the Trafficante and Haitian cases as well as other cases to which the government was a party. Judge Hastings duly expressed his outrage and complained about these improper leaks to the Justice Department.

The Subcommittee has now devoted more than a day of its hearings receiving testimony from a former prosecutor and two FBI agents who expressed outrage over the disclosure of sensitive information to Mayor Clark that placed an FBI undercover informant, Rivero, and others in jeopardy. Both Mr. Martinez and Agent Mazzella have piously proclaimed that it would be essential that the source of such a leak be identified and criminally prosecuted. This then is the stance taken when the Justice Department and FBI claim that it was Judge Hastings who was the source of the leak.

The record before the Subcommittee is devoid of any information showing that the source of the leaks that placed Dredge in danger and jeopardized Judge Hastings's right to a fair trial was ever sought, identified, or sanctioned. Those in the Justice Department and FBI chains-of-command should be examined thoroughly. What investigations were initiated to identify the source or sources of these leaks? What sanctions were imposed upon the culprits? Unless these officials can satisfy the Subcommittee that the pious Martinez-Mazzella standard was vigorously applied to the 1981 disclosures, a further circumstance will be established supporting the claim that the investigation was improperly motivated from the start.

4. Why did the prosecutors oppose Judge Hastings's request that Dredge be produced as a material witness and object to his introduction of evidence in support of his "rainmaking" defense when they had evidence that Borders had held himself out as having the power to fix cases before other federal judges? The record to date establishes a prima facie case that it was the prosecutors in the 1983 trial who obstructed justice. Judge Hastings vigorously sought to introduce evidence that all judges are vulnerable to schemes initiated by a few lawyers who make unfounded claims that they have the power to fix a case before a judge in order to exact exorbitant amounts from the client. The prosecutors objected and the trial juge ruled that he could not raise that defense unless he could show that Borders had also made such claims with respect to judges other than Judge Hastings. The prosecutors also opposed Judge Hastings's request that Dredge be produced as a material witness, representing that he was not. Dredge was the witness who could have enabled Judge Hastings to submit his rainmaking defense, and Agent Murphy has confirmed that the FBI had other information indicating that Borders was indeed a "rainmaker." The apparent misrepresentation by the prosecutors could only have been intended to [illegible] the

possibility of obtaining the conviction of a federal judge by depriving him of a fair trial. That the effort failed does not alter its significance as confirmatory evidence of improper motive and bias. Messrs. Weingarten and Richter should be called to explain these decisions, if they can.

The evidence available to the Subcommittee and the testimony provided at the hearings to date concerning the Mayor Clark allegations raise similar questions and suggest something approaching a vendetta. At a minimum, this evidence raises four additional questions.

5. Why did the FBI continue to focus upon Judge Hastings after they learned that Mayor Clark's story concerning the time of the alleged disclosure could not be reconciled with the time at which they have intercepted the call from Ferguson to Gordon and could not be corroborated by any other witness? The SCR demonstrates that Judge Hastings probably did not finish speaking until 10:15 a.m. and certainly did not finish speaking until 9:30 a.m. or later.[4] Mayor Clark has reaffirmed his story that the disclosure took place after the speech and has added that he returned to his office before calling Ferguson. As an award recipient he and the judge had to remain in the ballroom from the opening of the session until Judge Hastings finished his address. The mayor's story must be false, and its flaws must have been known to the FBI by early April 1986. Against that

---

[4] See SCR at 533-41 for a summary of the evidence with citations to the SCR.

background, there is no plausible explanation for the May 1 FBI telex (SCR 167-89) that does not require a finding of bias and vindictiveness. All involved in these decisions should be identified and called to account for these circumstances, if any proper explanation can be made. This view is supported by a related concern.

6. If the purpose of the investigation was in fact to determine whether Judge Hastings was the source of the leak, why did the FBI so vehemently urge criminal prosecution of a marginal case without seeking the obvious and available evidence that would have exonerated the judge? The FBI cannot have it both ways. The March 25, 1986, Miami Herald story, made part of the Subcommittee's record on Wednesday, makes it clear that the content of the grand jury proceedings had, in fact, been disclosed, notwithstanding Agent Mazzella's disingenuous disclaimers to the contrary. Mayor Clark denied he was the source, and has reiterated that denial under oath (SCR at 386.) The only other persons with knowledge of what went on inside the grand jury room were persons who were bound by the rule of secrecy. According to Agent Mazzella, the FBI did not investigate the source of this "leak." This investigative failure combined with the apparent failure to investigate the massive improper disclosures in 1981 provide further support for two inferences. The Justice Department and the FBI either encourage or are totally indifferent to leaks of sensitive information that may harm Judge Hastings. Both will vigorously

pursue any allegations against the judge no matter how marginal the evidence.

The FBI's failure to pursue its investigation into the Mayor Clark allegations tends to confirm this point. The evidence included in the *SCR* and to be proffered through Ms. Royals makes it clear that additional and dispositive evidence was readily available. It was not sought. Agent Mazzella's explanation for this failure is unacceptable. He testified that the reason for not pursuing the investigation was a fear that rumors might spread. The leaks reported in the *Miami Herald* had already assured that rumors would spread -- rumors that would persist and have persisted; rumors that could only be stilled by a complete investigation designed to establish the truth. The *prima facie* case is made and must be accepted unless the Subcommittee is prepared to examine all involved in these decisions in search of a proper explanation.

7. *Why did not the FBI investigate other possible sources of the leak, including sources within the FBI itself*? Agent Mazzella testified that the sole focus of the investigation into the "leak" was Judge Hastings. Mayor Clark has identified the illustrious Special Agent Amaroso as a golfing partner and has testified to his friendship with other present and former agents, including Agent Dowd and former Agent H. Paul Rico. The FBI had a memorandum indicating that the mayor had some information prior to July 23, 1985, and was trying to verify it through FBI sources (*SCR* 158-60). Agent Mazzella's explanation of why these and other potential sources were not investigated requires further inquiry[5]

* * *

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

A FURTHER MEMORANDUM ON PRE-TRIAL AND TRIAL PROCEDURES NECESSARY FOR A TRIAL THAT IS FAIR TO RESPONDENT

This memorandum restates respondent's views on actions that must be taken or authorized before evidentiary hearings can begin and procedures that should be observed at those hearings in light of the recent actions taken by the Senate. It also responds to the points raised in a letter dated March 24, 1989, from Senate Legal Counsel. In respondent's view, the Senate's recent decision confirms that the committee appointed pursuant to Senate Rule XI (the "Committee") should focus initially upon pre-trial procedures and renders premature some of the points raised in the March 24 letter.

A. Pre-Trial Procedures

Prior to the *Claiborne* case, the procedures that the House had to observe in order to determine whether an impeachment was appropriate assured that an accused's access to the evidence and his ability to prepare for trial was in substantial parity with that enjoyed by the House and its managers. In its prior inquiries, there were no trial records or records compiled by the judiciary through the exercise of the subpoena power. For that reason, the House committee or subcommittee charged with conducting the inquiry had no real choice. It had to hear the witnesses and consider the other evidence located by its staff and had to afford the respondent a full opportunity to cross-examine the witnesses, to challenge the other evidence, and to present such witnesses and evidence as he thought proper in his defense before that body. These practices were necessary to enable the House to assess the strength of the evidence against the accused so that it could make an informed determination. Those practices, however, also assured that the accused would have access to the evidence available to the House and access to the House's subpoena power to gather evidence that might bear upon his defense. Thus, if the House did vote to impeach an accused, the House and its managers and respondent and his counsel necessarily found themselves in substantially similar positions at the outset of the proceedings before the Senate.

Those practices were not followed in this case, and the pre-trial procedures established by the Committee must take account of the differences and their effect. In the present case, the House received a fully developed record of the evidence against the accused backed by a certification from the Judicial Conference of the United States that that record was sufficient to establish in its view that the accused judge "had engaged in conduct"[1] that might constitute grounds for impeachment. It is perhaps understandable that a House subcommittee would in such circumstance conclude that it could discharge its responsibilities by auditing that record and conducting hearings primarily to establish a basis for accepting the judiciary's finding.

In any event, that is what happened in the inquiry that preceded this case. The House subcommittee did not call the vast majority of even those witnesses that now appear on the managers' provisional witness lists. Indeed the principal witnesses at the House hearings concerning the matters alleged in the first fifteen articles were John Doar, the lawyer-investigator who had compiled the record for the judiciary, and William Murphy, the case agent who had supervised the original investigation for the FBI. Moreover, the House subcommittee did not call any of the witnesses that Judge Hastings had requested so that his claims and defenses might be developed and evaluated with respect to those accusations.

As a result of those procedures, at the time the articles were exhibited to the Senate, respondent and his counsel did not enjoy anything approaching the rough parity with the House and its managers that had marked prior impeachments. Far from it: The House held and holds a substantial monopoly over a vast quantity of witness statements, deposition transcripts, and documents and other materials that have not been made available to respondent and his counsel. The House, its managers, and the impeachment trial staff have had almost two years to develop, organize, and refine the evidence in preparation for trial. Respondent and his counsel do not yet have a full set of the witness statements, documents, and other materials that have been gathered by his accusers. Respondent and his counsel have not been accorded access to the subpoena power so that they might seek evidence that is necessary to aid him in developing and preparing a full and proper defense. Respondent submits that this imbalance must, in fairness, be redressed before the case can proceed to evidentiary hearings.

---

[1] *See* 28 U.S.C. § 372(c)(8)(A).

Whatever view one takes of the procedures followed to date, surely the Committee must take account of the effects of those procedures as they bear upon the procedures the Senate must establish and observe in this case of impeachment. The Committee must take such actions as are necessary to assure that the respondent in this case is accorded the kind of fairness, protections, and opportunities that have been accorded respondents in prior impeachments. Whatever weight the Senators ultimately assign the jury's acquittal, surely the presence that verdict must serve here as a caution against any action or procedure that would deny, or create the appearance that respondent had been denied, a full and fair opportunity to defend himself the second time the accusations were tried.

The decision of the Senate to deny the motion to dismiss Articles I through XV established two points that enhance the requirement that proper pre-trial procedures be allowed in this case. The decision established that, in the Senate's view, these proceedings are essentially civil, rather than criminal, in nature.[2] That decision also established the Senate's view that it remains feasible to conduct a trial that is fair to the respondent more than six years after the fact and, we trust, evidenced the Senate's commitment to assure that the trial of this impeachment is, in fact, fair to this respondent. Whatever view one takes of that decision, the procedures and practices established for the remainder of this case must be consistent with that decision and its requirements.

The procedures and practices necessary to assure the proper preparation and expeditious trial of non-criminal matters are well-known and regularly observed among competent practitioners as well as by tribunals in which such matters are ordinarily tried. Under standard practice, once the pleadings are settled, the parties must be afforded equal access to discovery procedures. This access is intended to assure that elements of surprise and unfairness are eliminated. It also assures that each side may compel production and discovery from third parties, as well as the opposing side, in order that each may gather information that is or may lead to evidence that is relevant to its claims. Under this contemporary practice, liberal discovery is encouraged, and the burden is upon the party which would withhold or limit an opponent's access to specific information to satisfy the tribunal that proper justification exists for the typically narrow restrictions sought.

---

[2] We do not suggest the Senate's view extends to all characteristics of impeachments or in any way undermines other protections customarily accorded an accused official in impeachment proceedings. The views developed here are limited to the procedural consequences of that decision insofar as they bear upon the rights that must now be accorded the respondent in this case of impeachment.

These procedures serve the tribunal's interest in an orderly trial as well as the parties' interest in a trial that is fair. It is through the process of deposing the custodians or authors of documents that the parties may satisfy themselves as to matters such as the authenticity, reliability, and meaning of documents and other records and thereby lay a proper foundation for developing accurate and reliable stipulations that may avoid much of the testimony that would otherwise be necessary at trial. Similarly, contemporary practice assumes that potential witnesses will have been deposed in advance of trial at proceedings in which both sides are represented. The information thus generated makes it feasible for the parties to eliminate witnesses whose testimony would be irrelevant or marginal without consuming the tribunal's time at trial that would otherwise be necessary to make those determinations. It also makes it feasible for the parties to agree upon stipulations where the information so tested is subject to neither dispute nor ambiguity. Such depositions also serve the interests of expedition as well as fairness by allowing the parties to plan their examinations and cross-examinations of the witness to assure an effective and efficient presentation of the testimony that must be presented at trial.

These procedures also enable the tribunal to plan a trial that promotes the dual objectives of fairness and expedition. After the parties have been afforded fair and comparable access to discovery in order to develop their respective positions, the tribunal may properly require the submission of detailed proposed pre-trial orders and conduct pre-trial conferences in order to generate an appropriate final pre-trial order. At that stage, the tribunal may properly encourage appropriate stipulations and establish a plan for trial that identifies, with some particularity, the witness who will be called, the documents and other material that will be offered, and the principal evidentiary issues that are likely to arise at trial.

The proceedings that have taken place to date have not observed these standards and have resulted in a disparity in preparation that is inconsistent with precedent and the requirements of fundamental fairness. The House conducted its own *ex parte* inquiry and has framed its positions in the Senate as if it were a grand jury and its managers were prosecutors and as if respondent's rights might be largely confined to those accorded the accused in proceedings that are criminal in nature. As a result, the House has been able to use its subpoena power to gather testimony and other evidence and information for almost two years, while counsel for respondent have been hampered by the absence of any procedures or standards affording them comparable opportunities (or the resources) that would have made it possible for them to engage in proper investigation and discovery on behalf of respondent.[3]

The requirements of fairness would in any event have required the Senate to take such compensatory action as was necessary to eliminate the disparity that had accrued as a result of the unique procedures that had been employed in the prior proceedings. The Senate's recent decision substantially repudiated the view under which the proceedings have been conducted to date and thus enhanced the need for proper redress now. At a minimum, respondent must now be accorded the time and resources necessary to relieve the inappropriate handicaps that have accrued as a result of the erroneous premises under which the proceedings have been conducted to date.

Specifically, the Senate's determination has established the basic principles that should govern the procedures to be followed in this case in at least two respects. First, respondent is now clearly entitled to full discovery of the kind normally accorded litigants in civil proceedings initiated by the government to vindicate a public right.

---

[3] Respondent's preparation has been further hampered by the rather narrow view the managers and staff have taken of their obligations to respondent and his counsel established by the requirements of courtesy and fairness, a point illustrated below.

The imbalance established by the House's reliance upon the record certified to it by the judiciary would have required such relief in any event. In view of the Senate's decision, the House may no longer claim, as it has to date, that the discovery practices evidenced in English criminal impeachments or applied to defendants in criminal proceedings in this country define the limits of respondent's rights to pre-trial discovery in this case.

Second, the fact that the House failed to allow respondent any opportunity to develop evidence in support of his claims and defenses during its inquiry would have required that the Senate afford him the access to its subpoena powers necessary to assure him a fair opportunity to prepare for trial in any event. The view taken by the Senate should now place that point beyond dispute. It should now be clear that, once proper discovery has been provided by the House, respondent must be afforded time and access to the subpoena power of the kind routinely afforded in civil proceedings. Fairness requires that he be permitted to conduct the analyses, interviews, and depositions necessary to establish appropriate parity between his discovery and trial preparation and that of the House, insofar as that remains possible.

The Senate's commitment to conduct a trial that is fair to respondent establishes further grounds for the adoption of procedures such as those described above, grounds that are unique to this case. The passage of time and the practices followed in the prior proceedings have given the House a monopoly over evidence that could not now be reconstructed from its original sources. For example, the recollections reflected in statements and depositions taken by the FBI, the judiciary's investigators, and the House impeachment staff could no longer be fairly reconstructed or assessed six years after the fact without access to those materials. Moreover, it seems inconceivable that respondent's counsel would not now be granted access to the subpoena power and afforded a fair opportunity to gather such evidence bearing upon the claims he has asserted from the outset as may now remain. Whatever the view taken in a future case, the Senate's commitment to afford a fair trial in the extraordinary posture in which this case comes before it confirms the need for the observance of procedures such as these.

In order to give effect to these principles in the present case, respondent submits that the Committee should take the following actions:

1. The Committee promptly authorize, or recommend that the Senate authorize, the payment of the reasonable expenses of respondent's defense, including those that have accrued as well as those necessary to enable him to proceed from this point onward.[4]

---

[4] Constitutional principle and the requirements of fairness require that the Senate provide funds adequate to assure that Judge Hastings may prepare and submit a full and proper defense. We have submitted a *Motion Requesting Funds for Respondent's Defense* to develop those points and place the matter before the Senate for decision. The disposition of that motion and its timing, however, bear upon other issues which are presently before the Committee.

2. The Committee should promptly direct the House to prepare and deliver to respondent's counsel clear and unredacted copies of all documents and other tangible materials specified in either respondent's *First Request for Production of Documents and Other Tangible Materials* or the House's *Proposed Stipulation of Documents*.[5] We realize that there *may* be some documents or other materials in the House's possession for which there might be *some* claim of executive privilege or other ground for objecting to their production. We submit, however, that the burden should be upon the House to identify any specific documents or materials it wishes to withhold and present the grounds for its claim to this Committee for review and disposition.[6]

3. We do not want or ask that the Committee afford respondent's counsel time comparable to that taken by the House in conducting its investigations and preparing its ev-

---

[5] The Committee should be aware that respondent has *not* been given copies of the vast majority of the documents described in the *Proposed Stipulations* as it assesses the House's claim that adequate discovery has been supplied. The House managers and their staff have drawn a distinction between "granting access" and "providing copies." In their view the former is adequate and does not require the latter. Given that the respondent and his principal counsel are based in Miami, Florida, the practice has been and remains intolerable in our view.

[6] The House's claim that the Senate lacks the power to require production cannot be correct. The House submitted to the jurisdiction of the Senate in these proceedings when it exhibited its articles and demanded that the Senate proceed. Like any judicial tribunal, the Senate has the power to compel production of documents and witnesses necessary to assure a fair trial from the House and either of the other two branches of government. Under established jurisprudence, separation of powers doctrine at most provides a basis for the assertion of limited claims of privilege addressed to specific witnesses or documents.

idence for trial over the past two years. Based upon experience, we believe that, with the necessary resources, we can complete the necessary work within six months from the time we receive full discovery from the House. Accordingly, we submit that the Committee should allow respondent 180 days from the date on which funds are authorized and the House has completed production of the requested documents and other materials to enable respondent's counsel to conduct the analyses, investigations, and interviews necessary to bring his trial preparation to a proper level, a level approaching that which the House has achieved through the exercise of its powers and the deployment of its resources over the past two years.

4. The Committee should also authorize respondent, during that 180-day period, to request the issuance of Committee subpoenas to take depositions so that testimony and documents may be obtained from reluctant witnesses for the purpose of discovery and for the purposes of establishing the authenticity, or bases for challenges thereto, of documents that have been produced during proceedings where respondent was not present. These depositions could either be taken before a certified court reporter in the presence of counsel for both parties, as is done in ordinary litigation, or with the additional presence of a member of the Committee or its staff. Whatever the procedure adopted, such depositions should in any event substantially reduce the time that

the full Committee must devote to the preparation and trial of this case.

5. Under this plan, we believe the Committee may fairly direct the parties to submit comprehensive proposed pre-trial orders, comparable to those ordinarily required by the federal courts in civil proceedings pursuant to Rule 16 of the Federal Rules of Civil Procedure, within 60 days after the close of respondent's period for discovery and trial preparation. Although modest, the time and resources requested will suffice to enable us to establish rough parity in preparation and to confront the House's suggestions and the needs of the case in a manner that will be consistent with our duty to provide effective assistance to the judge and with the essential requirements of fairness, insofar as they can now be satisfied.

6. Based upon the foregoing steps, the Committee might also establish procedures and a schedule that will enable the Committee to recommend or adopt a final pre-trial order to govern the conduct of the evidentiary hearings in this case. In this way, the Committee might also establish a schedule that takes account of its members' schedules and affords them time to make arrangements and coordinate schedules in a manner that would enable the Committee to have more concentrated time available for the conduct of the evidentiary hearings that will be required in any event.

B. The Points Raised in the March 24 Letter

We believe the need for each of these actions should be apparent in light of the Senate's decision denying the motions to dismiss. Respondent cannot fairly be required to predict the issues likely to arise at trial with any precision until he has been afforded time and resources sufficient to enable his counsel to properly prepare his side of the case for trial. For that reason, we believe many of the points raised in the March 24 letter are premature and cannot be fairly considered or resolved at this time. Nonetheless, we address them to the extent we are presently able.

1. *Discovery Requests: The House Should Now Supply Clear and Unredacted Copies of All Documents and Other Tangible Materials Requested.* In response to the specific questions asked, Judge Hastings does not believe that the House has provided or has offered to provide anything approaching adequate discovery. After the House has made full production and subject to the right traditionally accorded the respondent to reserve his own testimony for presentation at trial, respondent has no objection to providing reciprocal discovery to the House prior to trial. The immediate need, however, is to assure that respondent and his counsel are given a full set of the materials that they need to proceed. A description of the extent of disparity that has resulted from the practices that have been followed to date may aid the Committee in understanding why prompt action to redress the imbalance is necessary.

a. *The House and the State of Its Discovery and Preparation.* Early in its inquiry, the House received a fully developed record of the evidence that the judiciary had compiled against Judge Hastings over a three-and-a-half year period with a report marshalling that evidence to support the conclusion he was guilty. That record included some 4880 pages of transcript recording the testimony of the 110 witnesses who had actually appeared before the judicial committee that conducted the investigations. It also included some 2800 documents that had been made part of the record, documents that substantially filled seven large file drawers. The House promptly authorized the employment of four lawyers, with appropriate paralegal and secretarial support, and the expenditure of funds for investigative costs to aid in the conduct of the resulting inquiry.

Thereafter, the House received a mass of material which the lawyer-investigator for the judicial committee had gathered and compiled over the course of its investigation, but which had not been made part of the record certified by the judiciary to the House. Although respondent has been denied access to those materials, the inventory included more than 225 "witness files"; original documents from the FBI and a three-volume set described as "contacts with FBI"; more than fifteen notebooks containing the analyses and digests that counsel for the judicial investigation had prepared for its use; an additional six file drawers of material that the judicial investigating committee's counsel had gathered or compiled; and miscellaneous other records.[7] All these materials were in the possession of the House subcommittee by October 1987 and constituted the base from which it could plan its investigation and further proceedings.

The House used its subpoena power and the services of its special staff for almost a year to obtain such further *ex parte* interviews, depositions, documents, and other materials as it thought necessary before any public hearings were conducted. We do not know the full extent of the information the House obtained in this manner, but we are aware that it acquired copies of the records compiled through two grand jury investigations and a substantial quantity of additional material from the FBI and other sources.

After exhibiting its articles of impeachment in the Senate, the House redesignated the special staff that had aided in the inquiry as the "Impeachment Trial Staff" and designated five additional lawyers as "House Judiciary Committee Staff Participating in Impeachment Trial Preparation" to assist its six managers in preparing for and presenting evidence at trial. The designated staff has continued to use the House's subpoena power to gather evidence and conduct additional *ex parte* interviews and depositions without affording respondent either notice or opportunity to appear.

---

[7] The inventories of materials that the Eleventh Circuit Judicial Council directed its counsel to transmit to the House's special counsel are reproduced in Addenda A and B to respondent's *First Request for Production of Documents and Other Tangible Materials*.

The actions authorized by the House and taken by its managers and staff over the past two years provide a fair indication of the time and resources competent lawyers might reasonably conclude were necessary to properly prepare this case for trial. Having had almost two years and the services of four specially designated counsel and five other lawyers to develop and perfect its case for trial, the managers should be ready to proceed.

b. *The Materials that Have Been Provided to Respondent.* The House uses "access" as a term of art. The judiciary declined to provide respondent a copy of the record it had certified to the House. When the House subcommittee finally authorized release of those materials to Judge Hastings, its special counsel initially took the position that counsel for the judge could only examine and xerox those materials in special counsel's office in Washington. When this position was reversed, special counsel supplied a full set of transcripts, but only those documents which were not voluminous and which could be readily copied. As a result, the portion of the transcripts and the exhibits Judge Hastings in fact received from that record occupies only about three file drawers; and some of the copies supplied were incomplete.

Immediately prior to its hearings in May 1988, the House subcommittee provided copies of additional materials from the 1981 and 1983 grand jury records and such additional FBI documents as its special counsel thought appropriate. Special counsel also delivered a copy of his Statement of Information that included copies of documents or extracts from documents interspersed with his statements of the inferences they were proffered to support. That represents the extent of the material that was afforded respondent prior to the date on which the articles were exhibited in the Senate.

c. *The Inadequacy of the Disclosures to Date: Some Illustrations:* The House has filed a *Proposed Stipulation of Documents* which identifies voluminous records, tape recordings, and other materials to whose authenticity its managers would like respondent to stipulate. Many of those documents were included in the record certified by the judicial investigating committee, but were not included in the portions of that record that had been copied by the House and given to respondent's counsel for their use. For example, the *Proposed Stipulation* identifies voluminous telephone records divided into 15 categories. All these records were gathered by the judicial investigating committee. None of these records were included in the copies provided to respondent's counsel. Similar deficiencies exist in the records specified in every category in that *Proposed Stipulation.*[8] As matters now stand, respondent's counsel does not even have available a complete set of the documents the House Managers view as potentially material.[9]

---

[8] The Impeachment Trial Staff's view of the situation illustrates problems that have made it impossible for respondent's counsel to engage in proper trial preparation to date. Counsel for Judge Hastings visited the offices of Impeachment Trial Staff to assess the documents that would have to be examined. He was shown a collection that occupied, as he recalls, eight file drawers. Counsel requested that he be supplied with a complete set of legible copies so that they could be examined in his office. The staff declined, suggesting that he could find copies of what the

The managers' response to respondent's request for production illustrates the central problem. In their view, the House managers may properly determine what materials should be given to respondent. No lawyer could responsibly practice under a procedure that left his client's access to necessary materials at the discretion of counsel for his adversary. By adopting the view urged by the House that these proceedings are essentially non-criminal in nature, the Senate has now eliminated the only conceivable basis for the House's position on discovery.

d. *Respondent's Need for the Materials Withheld.* Quite apart from the inconvenience caused by the practices employed by the managers and their staff, it should be clear that they are withholding material that is crucial to enable respondent to prepare for trial and material that should, in fairness, be provided to facilitate that work. For example, the managers indicate that at some unspecified future date it will provide copies of statements taken from persons it

---

House thought were the relevant extracts of any documents he did not have interspersed through the three-volume Statement of Information prepared by the staff and published by the House.

[9] The managers' views on this point confirm that their *Proposed Stipulation* was premature. As a further ground for declining to provide a complete set of the documents to respondent's counsel, the staff advised that some of them would probably *not* be used at trial. Counsel for respondent have neither time nor interest in considering stipulations concerning documents that may not be offered.

intends to call as witnesses. If respondent's counsel are to prepare to examine those witnesses effectively and efficiently, that disclosure should be ordered now. More important, counsel for respondent cannot properly determine who should be called as witnesses and what depositions should be taken until it is aware of the testimony that is available or potentially available. The starting point for their work must be full disclosure of materials that bear upon the point -- FBI and Justice Department interview notes and memoranda, Mr. Doar's witness files, and any statements or depositions taken by the House staff.[10] Moreover, respondent must be afforded a complete set of all documents that have been gathered, subject only to such valid claims of privilege with respect to specific items as may be presented to and upheld by this Committee, if his counsel are now to proceed in an expeditious as well as effective manner. In short, Judge Hastings and his counsel must be accorded parity with the House, its managers, and staff *before* his counsel can responsibly begin meaningful trial preparation. This is a minimum requirement of fairness.

e. *The Requirements of Fairness.* Fairness requires that counsel for respondent be given the same documents and other materials as the managers and their staff have long enjoyed. Fairness requires that they be given time to digest and organize that material and the power and resources necessary to gather information the House declined to seek. Fairness requires that counsel for respondent *not* be required to take firm positions on trial matters until they have had an opportunity to prepare for trial in the manner customarily permitted. Both the House and the respondent are entitled to the effective assistance of counsel in preparing and presenting their respective cases. Respondent and his counsel have been unfairly handicapped to date. The handicaps must now be eliminated.

---

[10] The need for this disclosure was enhanced by the unique procedures employed at the House subcommittee hearings. The vast majority of the twenty-nine people that now appear on the House's witness list were not called and thus were not examined on behalf of respondent in that forum. Only two of the seventy witnesses Judge Hastings suggested be examined in that forum were called, and, for many, Judge Hastings has never been afforded an opportunity to determine the nature and content of the information they have as it bears upon his claims.

Until respondent and his counsel have received and have had some opportunity to digest this material, they cannot develop positions on most of the other points raised that might meaningfully aid the Committee. Nonetheless, we offer the following views to illustrate the problem and provide the Committee with as much information as we believe is presently feasible.

2. *Respondent's Witness List and Related Concerns*. The request for a provisional witness list with an indication of the information each witness might provide places us in a dilemma. Were we required to provide a list in advance of discovery, we would have to list all those who might have useful information. Such a list would approach and might exceed 200 persons, but it would not provide the Committee with information that might usefully aid it in scheduling

hearings. After we have received proper discovery from the House and have had an opportunity to depose or interview those whom have not been examined on behalf of respondent to date, we expect to be in a position comparable to that which the managers and their staff now enjoy and to be able to present the Committee with a meaningful provisional list that responsibly meets its needs and fairly protects the judge's interests. We do believe, however, that we can provide information that may aid the Committee by illustrating the categories of persons who must be deposed (or be included on a witness list so they may be deposed at trial) and that will respond to some of the related concerns raised in the March 24 letter.

a. *William Dredge and "Rainmaking".* We will seek to examine Mr. Dredge thoroughly. He informed the judicial investigating committee that Mr. Borders had represented that he had the power to fix cases before several judges in addition to Judge Hastings. The available record also indicates that Joseph Nesline of Washington, D.C., was acting as a broker to the underworld for Borders's claimed powers. The record suggests that Nesline may have accepted Borders's claims as credible because Nesline believed that Borders had "fixed" a judge who placed Nesline on probation for tax evasion, notwithstanding Nesline's long criminal history. The media has reported, that Mr. Nesline suffers from Alzheimers disease. We will call Mr. Nesline and his wife Rebecca Sutton Nesline to determine the extent of the information he can now provide.

We have developed elsewhere the most plausible theory established by the available record.[11] In that view, Nesline used Dredge as a go-between to sell Borders services to criminal associates in South Florida until Dredge discovered that Borders did not have the power to "fix" a continuance in Judge Hastings's court. At that point, Dredge went to the government in order to terminate Borders's activities in a manner that would prevent other criminal associates to whom Nesline and Dredge had brokered Borders's services from discovering that they had been deceived and, additionally, to make a deal in his pending drug case. Insofar as the available record reflects, the House did not attempt to investigate or discover evidence concerning this theory.

The obvious sources of information concerning this theory -- Santos Trafficante and Tom and Frank Romano -- are now dead. We shall thus have to explore this theory through other sources, such as Phillip Moscato, an intermediary used by Dredge, either through depositions or at trial. We anticipate that Dredge, the Neslines, Moscato, and others in this category may be reluctant witnesses whose testimony the Committee will have to compel.

---

[11] *See* Anderson, *A Provisional and Preliminary Report on the Proceedings Against United States District Judge Alcee L. Hastings: 1981-1986* at 27-28 (summary), 96-117 (developed) (Jan. 16, 1987), *reissued* (Nov. 1987). The Provisional Report was reproduced in Appendix III to House subcommittee hearings.

The media have also reported, and respondent had identified a witness who was prepared to confirm at the 1983 trial, that Borders had solicited and accepted a "bribe" based upon his claim that he could fix a case pending before United States District Judge Barrington Parker. The FBI has acknowledged that it had an open investigation with respect to Borders's activities at the time Dredge came forward. We expect to seek the record of that investigation and examine the participants to confirm the existence of the scheme and the fact that Borders's claim was baseless in fact and was known by the government to be so. We also expect to call other judges about whom Borders made false claims, to the extent they can now be identified, so that they may confirm that Borders's claims were baseless. The participants in the underlying scheme may be reluctant witnesses; we assume the judges will not.

At his trial, Judge Hastings proffered the testimony of colleagues on his court concerning the existence and vulnerability of judges to false rainmaking claims and demonstrating that the FBI was aware that such claims had been made, but had routinely ignored them when they related to other judges serving on Judge Hastings's court. Judge Hastings expects to call these witnesses and others who have investigated "rainmaking" to testify before the Committee.

b. *Borders*. Those familiar with Mr. Borders have informed us that, if he were to testify truthfully, it is likely that he would be murdered by criminal associates whom he had deceived during his career and with whom he still may be involved. That is a view that Mr. Doar acknowledged was plausible and a view that is apparently shared by those who are most familiar with Borders's situation. It is difficult for us to assess these claims. Nonetheless, we shall continue to explore the existence and justification for Borders's concerns. Our assessment of the basis for these concerns and their probable affect on Borders's testimony will determine whether we ask the Committee to compel his testimony.

That determination will also depend in part upon the state of the record when the House rests and upon our assessment of the other evidence then available to support respondent's defense. In our view, the House should have assumed responsibility for compelling Mr. Borders's testimony during its inquiry. It declined to do so. Given that defect, we do not believe that we can fairly be asked to make an early determination on this point.

c. *Other Witnesses: Articles I - XV.* There were more than 40 witnesses who appeared to testify at the request of the defense at respondent's 1983 trial. At least one of these is now dead. The others, or persons with comparable information, will be called to testify on issues raised by the accusations made in Articles I through XV. In addition there were several former senior government officials who appeared at Borders's trial whose testimony demonstrates that Judge Hastings was not the only such official who had been deceived by Borders. They or others similarly situated will also be called.

The circumstances and manner in which the decision was made to make Judge Hastings a target of "Operation Apple Eye" and then to arrest Borders at the scene of the payoff, rather than "letting the money run," have troubled all who have examined the matter. The cause for concern was corroborated by the conduct of the prosecutors thereafter, in particular by their extraordinary misrepresentation that Dredge was not a material witness. The underlying facts have never been properly explored or developed. They bear directly upon the credibility of the FBI agents and records that the House suggests it may present at trial as well as upon issues that are central to protecting federal judges from abuses of power that might undermine their independence. We asked the House subcommittee to call those in chain of command at its inquiry. It declined.

We believe these issues should now be explored in discovery so that the number of witnesses and other evidence that must be presented at trial may be properly identified and appropriately limited. Otherwise, we would have to establish the initial predicates showing the relevance and materiality through cross-examination of the House's witnesses during the evidentiary hearings and then proceed to develop as well as present the necessary additional witnesses and evidence a step at a time.[12]

---

[12] Clear abuses occurred during the hearings before the judicial investigating committee. Some of these bear di-

The House has listed a professor of linguistics, Roger Schuy, as an expert witness. The courts have thus far generally recognized that the use of experts to testify concerning the meaning of conversations improperly invades the domain of the jury and have excluded such testimony in cases such as this. If the House is permitted to use this witness, however, respondent will call other experts in the field so the Senate may be adequately informed concerning the validity of Professor Schuy's methodology and the credibility and value of such conclusions as he may offer.

Respondent also presently anticipates that he will call experts on two other subjects. He will call those who can testify concerning the proper standards and procedures customarily employed in the conduct of public corruption investigations and prosecutions in order that the Senate may properly assess the credibility of those who conducted the investigations and prosecution in this case. He expects also to call witnesses familiar with the practice of "rainmaking" to set his evidence on that issue in a proper context.

---

rectly upon the credibility of testimony and evidence that is likely to be presented at trial. All should be relevant in any proceeding which must determine whether government officials have improperly abused their powers to drive a disfavored judge from the bench. Some of this evidence will in any event come out in cross-examination or otherwise. The extent of this and other misconduct evidence that is material to the issues in this trial cannot fully be specified until proper discovery had been completed. Otherwise, the issues would have to be resolved a step at a time during the evidentiary hearings.

d. *Other Witnesses: Article XVI*. The accusations in Article XVI are based upon the repeated testimony of Mayor Steven P. Clark. According to Mayor Clark, after giving a speech, at a conference in September 6, 1985, Judge Hastings came down from the podium into the audience and then told the mayor to stay away from a man named Kevin Gordon because he was hot and was using the mayor's name in Hialeah. This the judge has flatly denied.

There were some 800 people in the audience at that speech and to date none has been identified who saw the judge leave the podium and go into the audience let alone talk to the mayor after the speech. The FBI, however, interviewed only a few of these people, and the testimony of those and others should be heard. When proper pre-trial discovery is completed, the number called before the Committee should be small. In the absence of such discovery, the number might be far greater.

From the record to date, it seems clear that the mayor in fact received information concerning the investigation from someone. There is evidence suggesting that the source may have been the FBI, and there are other significant possibilities that must be explored. Again, with proper discovery the number of witnesses and extent of their testimony and the other evidence on these points is likely to be more manageable than it will be if Judge Hastings is required to seek to develop these points during the evidentiary hearings.

e. *The House's Motion In Limine*. The House's Motion in Limine is premature insofar as it asks the Senate to impose a limit on the number of character witnesses Judge Hastings may call in his defense. The extent to which it will be necessary for respondent to place his character in issue and call witnesses to establish his integrity and competence as a man and a judge is a matter that cannot be fully determined until the House has rested. Many of the witnesses who will be called by respondent on other points will have information that is likely to bear upon many of the issues that may arise in this area. It would be premature to speculate whether or as to nature and extent of the additional evidence that might be required.

The House's motion as it relates to evidence concerning "the motivations of persons in the Executive and Judicial Branches" is premature and is untenable in any event. It is premature because the House declined to address this question in its inquiry and respondent has not elsewhere been permitted to discover or develop evidence necessary to establish the materiality of these claims. It is also premature because the Senate could not properly make the necessary determinations in advance of trial.

Ten of the twenty-nine witnesses on the House's provisional witness list are present or former Executive Branch agents who participated in the investigations or prosecution of Judge Hastings. By calling them to the stand, the House will place their credibility and the credibility of the evidence they offer in issue. Motivation and bias that may have affected a witness's testimony and evidence is always relevant where credibility is in issue. Evidence that suggests that a witness may have been improperly motivated or influenced cannot be excluded or ignored. The House's claim on this point is nothing more than an improper effort to deny respondent the right to confront the witnesses and evidence against him.

It is also clear that the motion seeks to exclude in advance evidence that is clearly relevant to facts placed directly in issue by the pleadings in this case. By his affirmative defenses, Judge Hastings has squarely placed the conduct of his accusers in issue with respect to each article. The House did not ask the Senate to strike those defenses as a matter of law, and the pleadings are now settled. It is simply inappropriate for the House to ask this Committee to take responsibility for that decision in advance of discovery or trial under the guise of a preliminary ruling on evidence.

The issues raised by those defenses go to the heart of the Senate's role in the trial of this case. The powers of impeachment and trial were assigned to the House and Senate as part of a plan to protect the independence of federal judges by insulating them from the powers of officials in other branches. This is not a case in which the Senate has before it a convicted judge seeking to challenge the government's conduct with respect to matters other than those alleged in the articles. This is a case in which a judge who was acquitted by a jury alleges that the accusations restated in the articles are the product of improper conduct by official in other branches. Correctly read, the *Claiborne* decisions support respondent's view. Moreover, the House itself has accepted that view in its inquiry into the conduct of Judge Nixon. It is simply inconceivable that the House would persist in its view now that it has decided that a *convicted* judge is entitled to a full and fair opportunity to explore the conduct and motivations of his accusers.

The Committee should deny the motions as premature at this stage. If the House moves to strike the defenses or renews its claim when discovery is complete or if issues arise at the evidentiary hearings, the matter may then be properly briefed and presented for decision in an appropriate concrete context.

3. *The Proposed Stipulation Process*. We continue to adhere, in large measure, to the views expressed in our submissions to the Rules Committee concerning the House's proposals for a stipulation process.[13] The essence of our view is that respondent must be allotted the necessary time and resources for proper discovery before a stipulation negotiation process could fairly be requested or meaningfully be undertaken.

---

[13] The relevant portions of these submissions are reproduced in S. Rep. No. 1, 101st Cong., 1st Sess. at 104-06, 135, 143.

Senate Legal Counsel called to our attention the procedures developed and described in *United States v. American Telephone & Telegraph Company*, 83 F.R.D. 323 (D.D.C. 1979) and 88 F.R.D. 47 (D.D.C. 1980). We fully agree with Judge Green's emphasis and conclusion that: "First. Adequate discovery is at the heart of the pretrial process . . . ." 83 F.R.D. at 329. Moreover, in view of the Senate's decision, we believe there is considerable merit in the view that the procedure established for that case might fairly be tailored and employed for the same purpose in this case. Once the House has produced the requested materials and respondent has been afforded the resources necessary to proceed with pretrial discovery, we believe that an exchange of statements of contentions would in all probability facilitate final discovery, lead to a narrowing of the issues, and result in an appropriate set of negotiated stipulations.

4. *Rules of Evidence*. We do not understand there to be disagreement with the view that the *principles* of evidence should apply. In our view, the principles as presently embodied in the Federal Rules of Evidence and contemporary practice in the federal courts should be applied or, at least, used as the starting point for guidance. We believe that it is largely premature to identify specific evidentiary questions that are likely to arise in advance of discovery. Nonetheless, the inclusion of a language expert in the House's witness-list illustrates the kind of eviden-

tiary questions that are likely to arise and require reference to some body of authority for resolution.

Conclusion

Other preliminary issues will almost certainly arise as this case proceeds. We submit that little would be accomplished by attempting to identify and resolve them at this stage. In our view, the Committee's initial efforts should be directed at establishing a plan for discovery and pretrial preparation and at taking or recommending the actions necessary to enable respondent to move forward. Once that has been accomplished, issues may be addressed as they arise and resolved in an orderly fashion.

Respectfully submitted,

John W. Karr
William G. McLain
Ann B. Richardson
Karr & McLain
1001 Connecticut Ave., NW
Washington, D.C. 20005
Tel: (202)785-9250
Fax: (202)785-9257

Robert S. Catz
c/o Cleveland State
University
College of Law
Cleveland, OH 44115

Terence J. Anderson
c/o The University of Miami
School of Law
Mailing Address:
P.O. Box 248087
Coral Gables, FL 33124
Courier service address:
1311 Miller Road
Coral Gables, FL 33146
Tel: (305)284-2971
Fax: (305)284-2349

Patricia Graham Williams
1055 N.W. 183rd Street
Miami, FL 33169

Counsel for
United States District Judge Alcee L. Hastings

SUBMISSION BY MANAGERS, APRIL 4, 1989, ON DOCUMENTS THAT THE HOUSE HAS (OR HAS NOT) PROVIDED TO JUDGE HASTINGS

I. DOCUMENTS PROVIDED JUDGE HASTINGS BY HOUSE

1. **House of Representatives' Statement of Information**
   [14 volumes, containing evidence relied upon by House for Articles I-XV and XVII. Provided May 9, 1988.]

2. **11th Circuit Investigating Committee Report**
   [768 pages, including appendices of evidence. Provided September 27, 1987.]

3. **11th Circuit Investigating Committee hearing transcripts**
   [28 volumes of hearing testimony. Provided April 25, 1988.]

4. **11th Circuit Investigating Committee exhibits**
   [Excluding those listed below in category II. Copied overwhelming majority of the approximate 2800 exhibits. Provided April 25, 1988.]

5. **Trial transcript of United States v. Borders**
   [Provided April 25, 1988.]

6. **Record of Grand Jury 81-A (MIA)**
   [Investigation of bribery conspiracy. Provided May 9, 1988.]

7. **Record of Grand Jury 86-3 (MIA)**
   [Investigation of wiretap leak. Provided May 9, 1988.]

8. **Court documents relating to Title III wiretap application**
   [Includes all progress reports and court orders. Provided May 9, 1988.]

9. **Diary of Assistant U.S. Attorney Roberto Martinez**
   [Relates to wiretap leak. Provided May 17, 1988.]

10. **MMAP Conference Schedule dated Sept. 6-7, 1985**
    [Provided May 17, 1988.]

11. **Kevin Gordon Plea Agreement**
    [Gordon was one of the targets on the wiretap investigation. Provided May 17, 1988.]

12. **FBI documents pertaining to wiretap investigation**
    [Redacted by House to protect individual privacy. Provided December 1988.]

13. **Miscellaneous Material printed in Appendix V to Subcommittee Hearings**
    [includes, for example, U.S. Judicial Conference certification, correspondence and staff interview of Dudley Williams (former law partner of William Borders). Provided Feb. 1989.]

II. DOCUMENTS IN HOUSE FILES TO WHICH JUDGE HASTINGS HAS BEEN GRANTED ACCESS

Judge Hastings has been granted access to the following documents and was told we would copy any pages he designated.

1. **11th Circuit Investigating Committee Exhibits that were difficult to copy**

   These exhibits were listed for Judge Hastings. Access granted April 25, 1988.

a)	Nos. 1-29	(Borders' message pads)
b)	No. 3001	(Hastings' 1981 court diary)
c)	No. 3002	(Betty Ann Williams' 1981 court diary)
d)	No. 3003	(Courtroom deputy's 1981 diary)
e)	Nos. 3004-5	(Hastings' message pads)
f)	No. 3006	(Betty Ann Wiliams' 1981 desk calendar)
g)	No. 3007	(" " " 1982 " ")
h)	No. 3008	(" " " 1983 " ")
i)	No. 3009	(1981 diary containing Hastings' personal travel and appointments)
j)	No. 3010	(Jan.-April 1983 diary containing Hastings' personal travel and appointments)
k)	No. 4500	(used men's purse)
l)	Nos. 1103-1653	(Hemphill Pride disciplinary file)
m)	No. 4500-A	(new men's purse)

2. ***United States v. Hastings*** **trial transcript**
3. ***United States v. Borders*** **trial exhibits**
4. ***United States v. Romano*** **trial transcript**

Access granted April 25, 1988

Judge Hastings has also been provided access to all FBI tapes relating to the bribery conspiracy and wiretap disclosure.

III. DOCUMENTS IN HOUSE FILES NOT MADE AVAILABLE

1. **Working files of John Doar, Counsel to the 11th Cir Investigating Committee**

   We reviewed all the items listed in Exhibit 1 to the Sept. 25, 1987 Judicial Council Resolution and Exhibit 2 to the October 9, 1987 Judicial Council Resolution. We did not copy all of the documents.

2. **FBI investigative files, falling into five general categories of documents**

   Many documents are irrelevant to the charges contained in the Articles of Impeachment or are duplicative of documents already provided to Judge Hastings. The FBI redacted the documents prior to providing them to the House.

   The five categories of documents are:

   i) documents pertaining to the bribery conspiracy case and the investigation of the unauthorized disclosure of wiretap information, including FBI 302s, teletypes, investigative reports, surveillance records, forensic reports, administrative memoranda, transcripts of tape recordings and newspaper articles.

   ii) documents pertaining to the FBI background check prior to Respondent's appointment to the Federal bench.

   iii) documents pertaining to an FBI investigation of an alleged terrorist organization believed to have made threats to numerous people, including Respondent.

   iv) documents pertaining to other FBI investigations that are irrelevant to the charges in the Articles of Impeachment.

   v) documents pertaining to requests by the Eleventh Circuit Investigating Committee for FBI assistance in locating witnesses and documents, and conducting investigations.

NOTE: We have also reviewed, but at this time do not have copies of, Department of Justice investigative and trial files pertaining to the bribery conspiracy case and the investigation into the disclosure of confidential wiretap information.

NOTE: We will provide Judge Hastings with any documents listed above that fall into the 4 discovery categories proposed by the House Managers.

V. DEFENSE FUNDS

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

The PRESIDING OFFICER. The Chair submits for printing in the CONGRESSIONAL RECORD a motion submitted by Judge Alcee Hastings to the Secretary of the Senate requesting funds for Judge Hastings' defense, and without determining whether the committee appointed pursuant to Senate Resolution 38 has authority to act on the motion, the Chair refers the motion to the committee for initial consideration.

The motion is as follows:

THE UNIVERSITY OF MIAMI
SCHOOL OF LAW,
Coral Gables, FL, March 29, 1989.

MICHAEL DAVIDSON, Esq.,
Senate Legal Counsel, Hart Senate Office Building, Washington, DC.

DEAR MR. DAVIDSON. I enclose a Motion Requesting Funds for Respondent's Defense. We view this request as a matter of the highest priority and principle. The disposition of this motion will, in significant measure, determine the nature and extent of our ability to address concerns such as those raised in your letter of March 24, 1989, effectively and realistically. For that reason, I concluded that the motion should be submitted separately and at the earliest possible moment.

Senate Resolution No. 38 authorizes payment of "[n]ecessary expenses of the [Rule XI] committee . . . from the contingent fund of the Senate . . . upon vouchers approved by the chairman." For reasons set forth in the motion, I think the Senate's decisions on March 11 have established the costs of Judge Hastings's defense as "necessary expenses" of this impeachment. I realize, however, that the chairman of the committee may wish to consult further to determine whether this request falls within the jurisdiction of the committee or should be authorized by the full Senate. I would appreciate your advising me of the procedures to be followed to obtain a ruling on this request.

I am forwarding the executed original of the motion with a copy of this letter to the Secretary for the Senate's permanent file. I am sending a copy to Lead Manager Bryant in care of Mr. Baron.

Sincerely,

TERENCE J. ANDERSON,
Counsel to U.S. District Judge
Alcee L. Hastings.

[In the Senate of the United States, Sitting for the Trial of an Impeachment]

THE HOUSE OF REPRESENTATIVES, OF THE UNITED STATES, PLAINTIFF, *v.* THE HONORABLE ALCEE L. HASTINGS, A JUDGE OF THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, RESPONDENT

MOTION REQUESTING FUNDS FOR RESPONDENT'S DEFENSE

United States District Judge Alcee L. Hastings moves that the United States Senate promptly authorize payment, from its contingent fund or otherwise, of all expenses he has incurred and may reasonably incur in preparing for and participating in the trial of this impeachment. The reasons why the Senate should, in any event, pay these expenses were developed in memoranda submitted to the Senate Committee on Rules and Administration and are incorporated here.[1]

---

[1] The relevant parts of these memoranda are reprinted in S. Rep. No. 1, 101st Cong., 1st Sess. 90-92, 99-104 (1989).

Since the Rules Committee considered that request, the Senate has taken action that confirms the justification and the need for prompt action now. The Senate has determined that these proceedings are not criminal in nature and that the Senate can and will conduct a trial that is fair to respondent. In order to make good the commitments implicit in those determinations, we submit the Senate may and, in fairness, must now act promptly to assure that adequate funds are provided for respondent's defense. That action is necessary to assure that respondent's compensation is not diminished by these proceedings during his continuance in office, to eliminate the unfair handicaps under which respondent and his counsel have labored to date, and to minimize the consequences of those handicaps in the future, insofar as that is not feasible. We develop these points below.

A.

For seven years, Judge Hastings's accusers have enjoyed virtually unlimited access to federal funds and resources to pursue their investigations and to prepare their cases against Judge Hastings for trial. Throughout that period, the government has denied Judge Hastings funds to investigate and prepare for his defenses to those trials. The costs he has incurred in challenging the constitutionality of the various proceedings and in defending himself at his first trial have far exceeded the modest sums contributed for his defense and his diminished his income and estate substantially. As matters now stand, his judicial salary could not satisfy the interest that would accrue were the reasonable value of the legal services he has required to date calculated and assessed.

The decision by the Senate that respondent must prepare for and submit to a second trial on the accusations made by the House represents a commitment by the Senate that the trial conducted can and will be fair to Judge Hastings. The House managers have available to them the products of the seven years of investigations. They have had and will continue to have a special impeachment trial staff of four lawyers and the services of five other House lawyers, with appropriate paralegal, secretarial, and other supporting services, to aid them in preparing for and presenting the House's evidence at trial. We submit the Senate cannot maintain the appearance, let alone the reality, of fairness in these proceedings unless resources comparable to those the House has enjoyed and will enjoy are promptly made available to Judge Hastings.

Moreover, the Senate has now accepted the House's view that these are remedial proceedings to determine whether respondent's rights as an article III judge should be terminated. One of the rights respondent holds as an article III judge is the right to insist that his compensation not be diminished during his continuance in office. Since these are remedial proceedings in the House's and Senate's view, there can be no further justification or excuse for the exercise of the powers of impeachment and trial in a manner that must diminish the judge's compensation during his continuance in office. We now ask the Senate to acknowledge and give effect to the principles of its decision to deny the motion established.

B.

The Senate must be aware of the resources that have been and are available to the House to enable it to develop and prepare to try its accusations a second time. At the outset of its inquiry, the House received a record that had been compiled by the judiciary over a three-and-a-half year period. The judiciary had retained the services of two experienced lawyers, aided by paralegals and supporting staff, and had used the services of the FBI to aid in its investigation. The judiciary itself had begun its investigations with the product of an eighteen-month investigation and two trial records compiled by the Justice Department with extensive assistance from the FBI and the grand jury.

At the outset of its inquiry, the House retained special counsel, three assistant special counsel, and paralegal and other support staff to assist in further investigations and inquiries. In addition to its lead manager and five supporting managers, the House has maintained a special impeachment trial staff of four lawyers and has assigned five other lawyers to assist in preparing for the trial of this impeachment. The total costs and resources that have been expended in developing the case against respondent are unknown and may never be determined. The available figures establish that the amounts expended by the judiciary and the House for special counsel and staff and other costs of the investigations exceeded $2,000,000, even before the articles were exhibited. Those expenditures have mounted since.

Throughout the past seven years, the government has not provided any resources to enable Judge Hastings to conduct investigations or to prepare for or conduct either his first or second defense. As a result, Judge Hastings has already incurred liabilities such that his judicial salary would be insufficient to pay the interest on the debt if his counsel were to seek compensation for the time expended on his behalf. Moreover, the amounts he has been required to expend have substantially exceeded the sums that have been contributed over the years to aid him in his defense of his office. He is now confronted with the need to prepare for and participate in protracted trial proceedings before the Senate.

In order to prepare to defend himself a second time, the respondent and his counsel must now examine, analyze, and organize a record that consists of more than 10,000 pages of material. The House subcommittee declined to call the witnesses requested by Judge Hastings or, insofar as the record reflects, to conduct any inquiries into areas he had identified as crucial to his defense. For that reason, he and his counsel must also prepare for a trial at which they will be forced to identify, and call witnesses who have not previously been examined in any forum, many of whom will not be available for prior interview when funds are provided. The Senate cannot, we submit, maintain that these proceedings can be fair to Judge Hastings if he is required to bear these additional burdens without resources being made available.

If the trial is to be fair to Judge Hastings and is to be conducted in a manner that is fair and orderly, Judge Hastings must be given resources necessary to permit his counsel to devote their full time to this matter and to employ proper staff for the analysis and investigations necessary to prepare this case for trial. Of similar import, he must be given resources to assure that he and his counsel may be present in Washington for evidentiary hearings that are likely to consume more than 200 hours of actual testimony over a period of several months. These are not burdens that the Senate can, in fairness, expect Judge Hastings or his counsel to bear without proper support.

C.

The Senate should also understand the nature and the magnitude of the burdens that these proceedings have imposed and will impose upon Judge Hastings and his counsel. The proceedings in the Senate to date have focused largely upon pleadings, motions, and other procedural matters. Counsel for Judge Hastings have devoted more than 1500 hours just in preparing legal memoranda and other documents and attending the hearings and meeting scheduled thus far. Judge Hastings and his counsel have incurred costs in excess of $12,000 for transportation and accommodations and for federal express, telecommunications, photocopying, postage, and like expenses in connection with the proceedigns to date. These are conservative estimates.

The proceedings that will now be required will impose burdens that are different in kind. We estimate that 4000 hours of lawyer time would be required to conduct the analysis, interviews, and examinations necessary for proper trial preparation and to participate fully in more than 200 hours of hearings with anything approaching effectiveness. We also estimate that approximately $200,000 would be necessary to provide adequately for necessary transportation and accommodation for the judge and his counsel, for proper paralegal and secretarial support, and for other routine office expenses.

These are not burdens that the Senate or the American people can fairly expect Judge Hastings or his counsel to continue to absorb. The time and funds Judge Hastings and his counsel have invested for more than seven years should satisfy any skeptics that they will persist and endure in any event, but that will not make the proceedings fair. Moreover, they cannot in conscience, and the Senate cannot in fairness expect them to, reach the kinds of accommodations with their opponents that might otherwise be possible, if they are denied the resources necessary to conduct the prior investigations, interviews, examinations, and analyses that such accommodation would require. In this view, it is also in the interest of the Senate and the House that the Senate provide the funds necessary to enable the judge to proceed with a proper preparation and presentation of his defense.

D.

The Rules Committee concluded that the payment of fees and costs was "within the discretion of the Senate," but, in the absence of precedent, declined to recommend how the Senate should excercise that discretion.[2] At that time, the Senate had never determined whether proceedings such as these were criminal or remedial in nature. The Senate has now made its determination on that issue, and the proceedings have now reached the stage where the question of funds for the defense must be confronted and resolved. We submit that the decisions the Senate made in denying Judge Hastings's motions to dismiss necessarily established that the Constitution and its principles, as construed by the Senate, compel the conclusion that fund must be provided for a proper defense, at least when the accused is an acquitted federal judge.

---

[2] S. Rep. No. 1 *supra*, 113.

In denying the motion to dismiss Articles I through XV, the Senate necessarily determined that, in its view, impeachment proceedings are non-criminal in nature. In that view, they are remedial proceedings to determine whether the rights respondent holds as an article III judge should be terminated. One of the rights the respondent shares with all article III judges is the right to receive "a Compensation, which shall not be diminished *during their Continuance in Office.*" (U.S. Const., art. III, § 1; emphasis added.) Judge Hastings will continue in office unless and until the Senate enters a judgment of conviction in these proceedings. He is thus entitled to such protections as may be necessary to assure that his compensation is not diminished unless and until the Senate takes the action necessary to terminate his continuance of office.

The Senate has declared its view that the impeachment power is non-criminal and is not directed at rights the judge holds as an individual. It has thus established that these are powers that are directed only at rights he holds as a judge. By that determination, the Senate has necessarily established that the impeachment power may not properly be exercised to diminish a judge's compensation during his or her continuance in office. It follows that the guarantee embodied in Article III requires that funds necessary to prevent any diminution in his compensation through the date of judgment must be provided. We call upon the Senate here to observe the corollary it established when it decided that these were remedial rather than criminal proceedings.

E.

We could develop these points and the underlying principles at length. In our view, that should not be necessary, if the Senate is truly committed to conducting a trial that is fair. The judiciary and the House have used federal resources to conduct *ex parte* and secret investigations that have had the effect of undermining the judge's security, his reputation, his health, and his estate for six years. The actions taken and the burdens imposed have all been without precedent. The House has set aside generous resources to fund its efforts to prepare and prosecute its accusations through the trial of this impeachment. The Senate has determined that these are remedial proceedings necessary to protect the government, rather than proceedings to further burden or punish the respondent. The Senate can no longer rely upon the absence of precedent as an excuse for failing to take actions necessary to satisfy the principles and meet the commitments it made when it denied the the motion to dimiss. It should act now to end the financial impositions by providing respondent funds to pay all expenses necessary to a full and proper defense.

Respectfully submitted.

TERENCE J. ANDERSON,
c/o The University of Miami School of Law, Coral Gables, FL.
MAILING ADDRESS:
P.O. Box 248087
Coral Gables, FL 33124
COURIER SERVICE ADDRESS:
1311 Miller Road
Coral Gables, FL 33146
Tel: (305) 284-2971
Fax: (305) 284-2349
PATRICIA GRAHAM WILLIAMS,
Miami, FL.
JOHN W. KARR,
WILLIAM G. MCLAIN,
ANN B. RICHARDSON,
KARR & MCLAIN,
Washington, DC.

ROBERT S. CATZ,
c/o Cleveland State University, College of Law, Cleveland, OH.
Counsel for U.S. District Judge Alcee L. Hastings.

[Federal Express Airbill, Mar. 29, 1989]

PACKAGE TRACKING No. 1783884163

From: Prof. Terence J. Anderson, University of Miami School of Law, 1311 Miller or/RM 426, Coral Gables, FL.
To: The Hon. Walter Stewart, Secretary of the U.S. Senate, The Capitol, S-208, Washington, DC.

IN THE SENATE OF THE UNITED STATES
Sitting As A Court Of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

MEMORANDUM OF THE HOUSE MANAGERS REGARDING THE APPLICATION OF THE COMPENSATION CLAUSE OF THE U.S. CONSTITUTION TO RESPONDENT'S REQUEST FOR DEFENSE FUNDS

I. INTRODUCTION

Respondent has filed a Motion requesting that the Senate "promptly authorize payment from its contingent fund or otherwise, of all expenses he has incurred and may reasonably incur in preparing for and participating in the trial of this impeachment."[1] In support of this Motion, he contends that such reimbursement is compelled by Article III, Section 1 of the Constitution, the compensation clause, which states:

> . . . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during Continuation in Office.

Respondent also contends that as a matter of fairness, the Senate should reimburse his fees and costs.

The Senate Legal Counsel has requested that the House state its position on the issue of whether the award of fees and costs to Respondent is constitutionally mandated. The House Managers do not take a position as to whether, as a matter of discretion, such action should be taken.[2] However, as a matter of constitutional law, it is clear that Respondent's reliance upon the compensation clause is without merit.

---

[1] Motion Requesting Funds for Respondent's Defense [hereinafter "Motion"] filed March 29, 1989, at 1.

II. THE COMPENSATION CLAUSE DOES NOT OBLIGATE THE SENATE TO PAY THE COSTS AND EXPENSES OF AN IMPEACHMENT RESPONDENT

The doctrine of separation of powers contained in our Constitution depends for its efficacy upon the independence of the three branches of Government while, at the same time, permitting abuses by one branch to be checked by another. The Framers sought to secure the independence of the Federal judiciary by the twin protections of life tenure in office during "good behaviour"[3] and undiminished compensation. On the other hand, judges, like the President, Vice President and other civil officers, are subject to the impeachment power of the Legislative Branch. The question presented by Respondent is whether the expenditure of a Federal judge's salary, with or without funds from any other sources of income, to pay costs and expenses to defend against articles of impeachment amounts to a diminution of that compensation such that it violates the prohibition against such diminution contained in the compensation clause.

---

[2] It may be worthy of note that an award of fees in a federal impeachment would be unprecedented. In the one instance where an impeachment respondent, Judge Charles Swayne, sought reimbursement for his defense costs and expenses, the Senate took no action, notwithstanding the fact that the respondent was acquitted on the charges in the Articles of Impeachment. See. 39 Cong. Rec. 3601 (Feb. 28, 1905) and 3 Hinds' Precedents of the House of Representatives, sec. 2024, at 306 (1907).

[3] Article III, Sec. 1.

Respondent asserts that because the Senate has declared its view that the impeachment process is non-criminal, directed only at rights which Respondent holds as a judge, therefore the compensation clause requires the public funding of his defense.[4] Respondent, however, declines to offer support for this position, contending that it is "not necessary."[5] In fact, there is no support for such a view either in the history of the compensation clause itself or in the subsequent case law.

The rationale behind the compensation clause was discussed by Alexander Hamilton in The Federalist, No. 79, 403-405 (M. Beloff ed. 1987). He observed:

> Next to permanency in office, nothing can contribute more to the independence of the judges, than a fixed provision for their support . . . .
>
> The precautions for [state judges'] responsibility are comprised in the article respecting impeachments . . . . This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own constitution in respect to our own judges.

Thus, Hamilton emphasized the need to insulate the judiciary from pressure from the legislative use of the purse strings, while at the same time, he recognized the need for a mechanism by which the legislature could remove judges whose conduct demanded it.

---

[4] Motion, supra at 9.

[5] Ibid.

Subsequent judicial interpretation of the compensation clause has recognized that this clause was rooted in a long standing Anglo-American tradition of an independent judiciary. However, the courts have also recognized that "indirect, nondiscriminatory diminishments of judicial compensation, those which do not amount to an assault upon the independence of the third branch or any of its members, fall outside the protection of the compensation clause . . . ." *Atkins v. United States*, 556 F.2d 1028, 1045 (Ct. Cl. 1977), *cert. denied*, 434 U.S. 1009 (1978). "Plaintiffs need to demonstrate the existence of a plan fashioned by the political branches, or at least of gross neglect on their part, ineluctably operating to punish the judges *qua* judges, or to drive them from office despite the Constitution's guarantee of tenure in office 'during good Behaviour.'" *Id*. at 1054.

Thus, in *O'Malley v. Woodrough*, 307 U.S. 277 (1939), the Supreme Court rejected the notion that the income tax on salaries of judges assuming office after the enactment of that tax violated the compensation clause. The Court reasoned:

> . . . To suggest that [the income tax] makes inroads upon the independence of judges who took office after Congress had thus charged them with the common duties of citizenship, by making them bear their aliquot share of the cost of maintaining the Government, is to trivialize the great historic experience on which the framers based the safeguards of Article III, Sec. 1. To subject them to a general tax is merely to recognize that judges are also citizens, and that their particular function in government does not generate an immunity from sharing with their fellow citizens the material burden of the

> government whose Constitution and laws they are charged with administering.[6]

Similarly, in United States v. Will, 449 U.S. 200 (1980), the Supreme Court held that the compensation clause was not violated by a Congressional repeal or modification of a statutorily defined formula for annual cost-of-living increases in the compensation of judges. See also Atkins v. United States, supra, where the Court of Claims held that the Congressional failure to increase federal judges' salaries in an inflationary period did not violate the compensation cause. Thus, despite the fact that the "real" value of judicial compensation has been diminished by various factors, since the diminishment was nondiscriminatory and unrelated to the independence of the judiciary, the compensation clause was not offended.

Finally, and most directly on point, Respondent has been rebuffed in his attempts to rely on the compensation clause as a basis for ordering payment of his legal fees incurred in the proceedings under the Judicial Councils Reform and Judicial Disabilities Act of 1980. In Hastings v. Judicial Conference of the United States, et. al., 593 F. Supp. 1371 (1984), the Court held:

---

[6] O'Malley disapproved Evans v. Gore, 253 U.S. 245 (1920), where the Court had invalidated the application of the income tax law to a federal judge, and effectively overruled Miles v. Graham, 268 U.S. 501 (1925), extending Evans to exempt from application of the tax act the salary of a Court of Claims judge who had been appointed after the tax law was enacted.

> Judge Hastings contends the government's refusal to pay for his legal fees to defend against the disciplinary action diminishes his compensation in office in violation of Article III of the Constitution. Congress, of course, is forbidden by the compensation clause from diminishing directly the salary of federal judges. See United States v. Will, [supra] . . . An indirect diminution of a judge's disposable income, triggered by that judge's own conduct, is entirely different. See Duplantier v. United States, 606 F.2d 654, 669 (5th Cir. 1979), upholding civil penalty provisions of the Ethics in Government Act, 28 U.S.C.A. Sec. 301 *et seq.*, as applied to judges. This claim has no more substance than the contention of judges assigned to duties away from their homes that their compensation is diminished because their *per diem* allowance does not cover actual necessary expenses.[7]

In Duplantier, supra, a class of federal judges challenged the Ethics in Government Act of 1978 on the grounds, *inter alia*, that imposition of a civil penalty under the Act would diminish a judge's compensation, in violation of Article III of the Constitution. That court observed that in neither case was there a "'plan fashioned by the political branches . . . ineluctably operating to punish the judges *qua* judges,'" and emphasized that Congress had imposed precisely the same penalty for failure to file financial reports on members of Congress and on members of the executive branch. 606 F.2d at 669, quoting Atkins, at 1054. Similarly, in Atkins, the Court of Claims held that a seven-year "freeze" on judicial pay during a period of inflation did not offend the compensation clause. The court explicitly noted that judges were not the only targets of the freeze; numerous other government employees -- top executive branch officials and Members of Congress -- had been included.

---

[7] On appeal, the Court of Appeals did not reach the issue of payment of fees. Hastings v. Judicial Conference of the United States, 770 F.2d 1093 (1985). See, however, concurring opinion, in which Judge Edwards expresses concern about the issue. Id. at 1110-1111.

Likewise, the impeachment process, and the attendant costs incurred by a respondent, are not limited to judges. The President, Vice-President, and civil officers are all liable to impeachment. As with the imposition of taxes and the impact of inflation, judges are part of a larger group subject to the law. "[T]he fact that judges are not alone in that class substantially weakens plaintiffs' allegations of discrimination." Atkins, supra at 1055.

Here, there is no discrimination by a political branch against judges as a class. Indeed, a discriminatory intent is belied by the fact that this impeachment was initiated by a referral from the judicial branch. Moreover, as emphasized in Hastings v. Judicial Council, supra, this case involves an indirect diminution of compensation "triggered by that judge's own conduct." Finally, impeachment itself is not designed to undermine the independence of the Federal judiciary, but rather to preserve the integrity of that branch as required by the Constitution.

For the foregoing reasons, Respondent's contention that an award of fees and costs to him is mandated by the Constitution should be rejected.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /PW
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant

Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

April 7, 1989

MEETINGS OF APRIL 4, 12 AND 13, 1989

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA
ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE D. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-5577

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Tuesday, April 4, 1989

With due notice, the committee held an informal pretrial conference with the parties, in closed session. The meeting was held to provide an opportunity for the House managers and counsel for Judge Alcee L. Hastings to narrow the differences between the parties with regard to the pretrial issues to be addressed at the first open pretrial conference on April 12, 1989.

The committee will hear arguments on April 12, 1989, about the following major pretrial issues: (1) Judge Hastings' motion for defense funds, (2) discovery through documents and depositions, (3) stipulation as to facts and documents proposed by the House managers, (4) the House managers' motion in limine to exclude irrelevant evidence, (5) witness lists, (6) evidentiary rules and principles, and (7) pretrial and trial schedule.

Isabel T McVeigh
Isabel T. McVeigh
Journal Clerk

UNITED STATES SENATE
SENATE IMPEACHMENT TRIAL COMMITTEE

Meeting To Hear Arguments on Pretrial Issues
Presented by the Parties in the Impeachment
of Judge Alcee L. Hastings

AGENDA

Wednesday, April 12, 1989, 1:30 p.m.
SD-628, Dirksen Senate Office Building

HOUSE MANAGERS:

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

HOUSE COUNSEL:

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

RESPONDENT:

Alcee L. Hastings

RESPONDENT'S COUNSEL:

Terence J. Anderson
Patricia Graham Williams
Robert S. Catz

OPEN SESSION: 1:30 p.m. to 3:30 p.m.

A. Argument by the Parties: One hour

For the House:

Representative John Bryant
Representative George W. Gekas

For Judge Hastings:

Professor Terence J. Anderson

(half/hour for each party to argue all motions or other matters presented to the Committee; each party is responsible for allocating its own time among the issues.)

B. Questions from Committee Members: One hour

ISSUES TO BE ARGUED

A. Issues on which the House is the movant or principal proponent:

1. Stipulations of facts and documents

   House's proposal that any stipulation be accepted as true unless opposing party files written objection including proffer as to why proposed stipulation should not be accepted as true

2. Motion in limine

   House motion to exclude all evidence of motivations of executive and judicial branch personnel who investigated Judge Hastings, and to limit character testimony

B. Issues on which Judge Hastings is the movant or principal proponent:

1. Provision of funds for Judge Hastings' defense

2. Discovery

   a. Judge Hastings' request for production and copying of documents obtained by House from (i) Investigating Committee of the Eleventh Circuit Judicial Council; (ii) FBI; (iii) Public Integrity Section of the Department of Justice; and (iv) other sources

      In response the House proposes that it provide (i) exculpatory evidence and that both parties provide (ii) documents that each proposes to offer in evidence, and (iii) prior sworn, adopted, or approved statements of witnesses that it intends to call; and (iv) transcribed substantially verbatim and contemporaneously recorded statements of witnesses that it intends to call

   b. Judge Hastings' request for use of Senate subpoena authority for pretrial depositions

C. Other issues of interest to parties and committee

1. Schedule for pretrial actions
    - a. Provisional list of Judge Hastings' witnesses and any additions to provisional list of House witnesses
    - b. Immunity proceedings, if any (e.g., Borders)
    - c. Determination whether the assistance of the House or the FBI will be needed to locate and obtain the presence of any witnesses (e.g., Dredge)
    - d. Identification of trial exhibits
    - e. Final pretrial statements
2. Evidentiary principles
3. Trial schedule

CLOSED SESSION: 3:30 p.m. to 5:00 p.m.

At the conclusion of the questioning of the parties by Committee Members, the Senate Impeachment Trial Committee will go into closed session and deliberate on these matters.

MEETING TO HEAR ARGUMENTS ON PRETRIAL ISSUES PRESENTED BY THE PARTIES IN THE IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

WEDNESDAY, APRIL 12, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee convened, pursuant to notice, at 1:51 p.m., in Room SD-628, Dirksen Senate Office Building, Hon. Jeff Bingaman (chairman of the committee) presiding.

Present: Senators Bingaman, Specter (vice chairman), Leahy, Pryor, Bryan, Kerrey, Lieberman, Durenberger, Rudman, Bond, Gorton, and Burns.

Staff present: Michael Davidson (Senate legal counsel) Morgan Frankel (assistant Senate legal counsel) Anthony Harvey (administrator) and Casey McGannon (staff assistant).

The CHAIRMAN. Why don't we begin the meeting of the committee this afternoon.

This afternoon, the Impeachment Trial Committee meets to hear arguments on various pretrial issues that have been discussed in pleadings that have been filed with the committee.

Senator Specter and I had a meeting this last week with counsel, both for the House and for the respondent, and I think had a clear notion as a result of that meeting of the items that would be discussed here.

The way we discussed presenting this, as I recall—and counsel can correct me if there is any confusion about this—but the expectation we had was that the House managers would proceed for a half hour with argument, up to a half hour—there is no requirement that they take that long—and then the attorneys for Judge Hastings would proceed for up to a half hour in response to that, and then we would have an hour of time for the committee to ask questions and to further inquire into various issues that have been raised.

Following that argument and question and answer period, then the committee would expect to spend some time deliberating amongst ourselves in closed session on some of the issues that have been presented and hope that we could come to some resolution as to what action we might take.

So, we will proceed. Senator Specter, did you have anything to add to that before we proceed to hear from the House managers?

The VICE CHAIRMAN. No, I am ready to proceed.

The CHAIRMAN. All right. We have some other Members who are still coming from the House vote or the Senate vote, but I think the better part of valor is to go ahead at this point. These are all matters that have been discussed in the pleadings that we have, so why do we not go ahead with the House manager.

Mr. Bryant, as I understand it, you are going to lead off for the House, is that right?

Mr. BRYANT. Yes, Mr. Chairman. I will lead off and will share the time with Mr. Gekas of Pennsylvania.

Mr. Chairman, on behalf of the House of Representatives, we want to thank the members of this committee for the opportunity to present our views on the pretrial issues pending here. The resolution of these issues will have a direct impact on the nature and the timing and the scope of the evidence that is presented in the presentation of evidence.

The House managers believe that the pretrial issues are ripe for consideration and we urge you to take the steps necessary to expeditiously proceed with the trial of the case in chief.

Throughout this proceeding, we have been guided by three principles which we suggest should have an impact or should guide also your judgment today: First, that the constitutional role of the House and the Senate in an impeachment proceeding be adhered to and respected; second, that there should be no element of surprise in the case for either side, the proceedings ought to be fair to both parties; and, third, we have considered as well our obligation to the public to insure timely consideration of this matter in furtherance of our responsibility to preserve the integrity of the Federal Judiciary.

With these principles in mind, we conducted the impeachment investigation in the House of Representatives, and it is with these principles in mind that we have put together the positions which we advocate today before the committee.

At the outset, for the benefit of members who may not have focused fully on the matters of yet, there are two entirely separate illegal transactions which make up the Articles of Impeachment which the Senate is considering.

First, the unauthorized disclosure in 1985 of the contents of a Federally supervised wiretap being supervised by Judge Alcee Hastings; and, second, the unrelated event, that is, the conspiracy to obtain a bribe in 1981 and the alleged lying under oath which stemmed from the trial of this matter two years later, in 1983. Those are separate and distinct matters.

The first issue for this committee to deal with is the issue of discovery, and that is, for those who may as yet be unfamiliar, the court supervised in the court setting the equivalent of a court-supervised provision of relevant information from each party to the other party so there are no surprises at trial.

What we urge the committee to bear in mind, as an initial matter and a very important matter, is that discovery in an impeachment proceeding is unprecedented. There is no precedent for it, there is no legal requirement for it, no constitutional mandate, nothing that would push the Senate forward to grant discovery at all, except to the extent that you wish to guarantee that this is a fair proceeding.

Nevertheless, we have provided already over the last year an enormous volume of information to Judge Hastings and to his counsel. I think it is very important that the committee have a clear understanding of how voluminous that information is.

Over the course of our investigation, we have provided, for example—and this was a year ago—a copy of the 28 volumes of testimony taken by the Eleventh Circuit Committee that initially investigated this case before it ever reached the Congress. There are before me here examples, two volumes out of 24—I think I said 28 volumes of testimony—that was provided to Judge Hastings and his counsel over a year ago, in excess of 4,000 pages.

We provided copies of the overwhelming majority of the 2,800 exhibits gathered by that investigating committee; we provided access as well to the rest of the exhibits, and told him we would copy any of those which he selected. The only ones which were not copied, which we urged him to come and ask for copies of, were items such as the judge's courtroom diary which we felt would be totally unnecessary to xerox in whole, inasmuch as only a few pages of it have any bearing whatsoever on the case. Another example would be telephone records from the law office of his alleged co-conspirator, obviously 99.9 percent of which would have no bearing on this case whatsoever. We were quite willing to let him examine it and choose whatever he would like to have copies of, but we felt at the time that it was unnecessary to go to the trouble of making copies.

Third, we provided the grand jury materials on both the bribery conspiracy matter and the unauthorized disclosure of wiretap information, materials, by the way, which the House had to litigate in order to obtain over Judge Hastings' opposition.

Additionally, last May we provided the respondent with the House of Representatives 14-volume statement of information, which includes virtually every piece of evidence the House relied upon when it adopted the Articles of Impeachment on the bribery, conspiracy and perjury charges, of which these volumes here are only a few examples.

We have also provided the judge with the record on which the House adopted Article 16, which charges the unauthorized disclosure of wiretap, of which this is an example, and there are also numerous other documents that we turned over as well.

In short, throughout this proceeding, the House has adhered to the principle that Judge Hastings should be given copies of or access to the relevant information, and we continue to adhere to this principle by urging the committee to adopt our discovery position.

That position is this: In order to obtain the goal of no surprises at trial, the House has agreed that it will provide to Judge Hastings four categories of documents: a copy of any document or other tangible evidence which we intend to introduce at trial, any statement of a trial witness that is sworn, adopted or approved by the witness and any transcribed statement by a witness to be called to trial which is a substantially verbatim recital of an oral statement, and, fourth and finally, any material which is exculpatory in nature, that is, which tends to prove a material fact in the defense's case.

Judge Hastings has contended, in spite of this enormous volume of material and in spite of our willingness to provide him with the kind of information which is normally required even if you choose to draw an analogy between this proceeding and a civil or criminal proceeding, he has contended that this is not enough and asserts that he should have access not only to the thousands of pages already provided and any additional documents that fall into the four discovery categories I mentioned, but also to every piece of paper the House reviewed in its effort to discharge its constitutional responsibility of determining whether or not impeachment was warranted.

He also contends that he is entitled to the House of Representatives' own work product. We strongly urge the committee to adopt the position that this is untenable, it is unprecedented, it does not take place even in a court setting, and it certainly should not be permitted to take place in this setting. He has no right to a copy of every document that we reviewed or that we created, nor in any judicial proceeding is this the governing discovery standard.

The idea that the respondent should be allowed access to every document we came across while discharging our constitutional duty should be rejected by this committee, just as it will be rejected by a court. It would be a precedent which neither the House nor the Senate could possibly afford to establish for impeachments or other investigative proceedings that may be conducted in the future by Congress.

Judge Hastings, through his counsel, has presented to the Senate in his pleadings a picture of unfairness, that somehow he has been placed at a great disadvantage, that things have been withheld from him that he should have access to, and I have taken references to those alleged instances of unfairness from his pleadings and would like to make reference to just a few of them, to point out to you how strongly the House believes that those allegations by the counsel are spurious.

In his pleadings of March 31, 1989, to this committee, he complains that he was given access, but not copies, of materials until right before the hearings, and that the copies that he did get were incomplete.

The truth of the matter is that he was given copies of a vast majority of the Judicial Conference investigating exhibits almost a year ago. We offered to copy any of the remaining documents he specified, and he never made a further request for copies of those documents. As evidence of that——

The CHAIRMAN. Let me interrupt, Mr. Bryant. I am informed that the House has a vote that they need to go over and make at this point, is that right? Why don't we take a 10- to 15-minute break, and as soon as you can get back here we will commence again where you left off.

Mr. BRYANT. Very well.

The CHAIRMAN. We will stand in recess for that period.

[Recess.]

The CHAIRMAN. The hearing will come to order. Let us start again. It is obvious that we have a series of votes both in the House and Senate side this afternoon, and it is going to cause a disjointed type of hearing, but I think we need to do the best we can.

The House managers had started their argument on the various issues pending before the committee. Mr. Bryant, you had begun that, why don't you go ahead and proceed, summarize where you were and then continue, please.

Mr. **Bryant**. Thank you, Mr. Chairman.

I was in the process of making the strongly felt point that we on the House side have provided Judge Hastings with thousands of pages, every possible—in fact document material to this case, he has either given it or given free access to it, in the event that it is something that it is hard to copy, a form, for example, the Judge's court records here, of which there is more than one volume alone of these, and also anything else we have agreed to give him that might fall in that category, and we estimate that what falls into that category that is remaining that he has not been given already is a stack of paper maybe two or three inches high, certainly no more.

I think it would be valuable for the members of the committee, perhaps after our oral presentations are over with, to take a look at some of this material. This, for example, this statement of the facts that was utilized in the House proceedings is a paragraph-by-paragraph explanation of every fact, every important matter that was presented to the House subcommittee, it is annotated with references to the documents which support the facts. It is the entire case, and to be given that prior to going to trial is an enormous advantage that normally a respondent does not enjoy. In addition, I want to emphasize that he has had it for a year. This is not something that he has just received here recently.

I was also in the process of pointing out that Judge Hastings' contention that somehow or another this is not enough, that he has the right to every piece of paper that we have ever looked at, to our very work product, is a completely untenable position, without any precedent, and that it would set a terrible precedent if the Senate were to adopt the notion that he had access to the House's actual work product.

I had also pointed out that his attempt to paint a picture in the pleadings, that somehow he was placed at a disadvantage or somehow this is unfair, is simply inaccurate, and I have taken a couple of examples from his pleadings and refuted them directly, because of our strong view that that is just not an accurate picture.

He has been treated with enormous fairness, even given an enormous amount of material.

Finally, with regard to the issue of discovery, the House managers asked the committee to order not just the discovery which we have agreed to give to the respondent, but also reciprocal discovery, and by this I mean that the respondent should turn over to the House managers any document that falls into the same categories that we have proposed, for example, any document which he intends to use at trial, any statement of a trial witness that is sworn adopted or approved by the witness, and any transcribed statement by a witness to be called at the trial, which is a substantially verbatim recital of an oral statement. That ought to be imposed on both parties, is the point that we are making here.

Secondly, we strongly urge the committee to set a date for Judge Hastings' production of this reciprocal discovery material. The purpose, again, is to make sure there are no surprises at trial coming from either side.

Our position, we believe, is reasonable and is fair and especially, in light of the tremendous amount of material which has already been provided to him, in addition it fulfills our goal of urging the committee to adopt a procedure which will cause us to proceed in a timely fashion.

I want to state for the record that we do not have in our possession the Department of Justice materials which we reviewed. If the committee adopts our discovery position that we have urged you to adopt, we will make every effort to obtain and produce copies of those documents from the Justice Department. Again, however, the quantity of material remaining to be produced even under that circumstances is a stack of material no larger than two or three inches in height, and it is just not a very large amount of material and should not have any bearing on the scheduling decision of this committee with regard to trial.

With regard to scheduling, at a meeting with the parties last week, the chairman and the vice chairman proposed that the trial of the case begin after Memorial Day or approximately June 1st. The House managers urged the committee to adopt this date. It gives the parties more than enough time to prepare their case, especially in light of Senate Resolution 480, which was adopted last fall, in which the parties were instructed to be prepared for trial on March 1st of this year, which very easily could have been accomplished.

When setting a trial schedule, we urge the Senate to bear in mind that Judge Hastings knows what this case is about. These allegations in his pleadings that somehow he does not have a good reading on what this case is about are, to put it respectfully, preposterous. He has repeatedly emphasized that for seven years he has been aware of the charges pertaining to the bribery conspiracy with William Borders, the alleged co-conspirator. For three years, he has been aware of the charge that he disclosed confidential wiretap information.

Two years ago, the House began its investigation and since that time it has made available to him and his counsel thousands of pages of evidence which I have been referring to as we have proceeded here today.

Even if the committee were to adopt the date of the Articles of Impeachment last August as the relevant starting point, which we contend it is not the relevant starting point, but if you were to adopt it, the judge has had over eight months to investigate the charges, to interview witnesses, and to prepare his defense. He knows this case and there is not merit to the idea that a June 1st trial date does not give him adequate opportunity to prepare. I would point out to you that he has repeatedly said that this case is a rehash of charges that have been brought before. If that is the case, then he is fully aware of what was brought before. It is impossible to believe that he cannot be.

With regard to stipulations, the third point that I wish to raise today, we have urged the committee to adopt a procedure to deal with documentary evidence and to deal with facts that would allow stipulation of these facts which are not in dispute or which should not be in dispute, and stipulation of the validity of documents. These are documents like telephone records, travel records and court documents.

There are hundreds of undisputed facts that are relevant to the charges in the 17 Articles of Impeachment. In order to avoid a cumbersome trial and to reduce trial time, the House Managers believe that stipulations are in order and would be fair.

In fact, the Senate legal counsel encouraged the parties to propose stipulations, and so last December we filed our proposals regarding stipulations to address the authenticity of all the documents and list the hundreds of undisputed facts. To this day, the Judge, the respondent, has failed to respond with any specificity to our proposed stipulations. Instead, he has refused to stipulate to any facts, and what he has said is that he will not stipulate to the authenticity of documents until he has had a chance to review the originals of these documents.

We have given him that opportunity. He was invited at the end of January of this year to examine the originals. He came to the office on February 17, 1989, to presumably to examine those originals. Instead of examining them, he demanded copies of them. He already had copies of them and they are right here. And when they would not give him more copies because of the time involved in it, he left the office. That transaction is memorialized in correspondence which we will make available to the committee. There can be no disputing it.

To address this impasse over stipulations and in an attempt to avoid a protracted and lengthy trial, we ask the committee to adopt the following procedures:

We ask you to set a date by which any party opposing a proposed stipulation must file a written objection to that stipulation, stating the specific reason why it is not agreed to. If an objection is not filed, the stipulation would then be deemed admitted. If an objection is filed, a smaller group of this committee would review the basis of the objection to determine whether it is reasonable. These procedures involve the participation of some of the members of this committee prior to trial, but I assure you that the time spent in dealing with this stipulation matter will be well worth the effort, because without stipulations, the presentation of evidence in this case will be extremely lengthy and cumbersome and unnecessarily prolonged.

Fourth, we ask you to adopt a procedure related to the filing of witness lists. The House managers urge the committee to set a date by which both parties must file provisional witness lists, which would include a proffer or an explanation as to what each witness will testify to; and, second, the committee should require the parties to make a good-faith effort to name only those persons who must testify at trial.

There is a third matter under the issue of witness lists which must be addressed, and that is the complex matter regarding William Borders. William Borders is the Washington, D.C. attorney, formerly an attorney here, who was found guilty in Federal court of having entered into a conspiracy with Judge Hastings to accept a bribe. He has refused—he, by the way, was convicted and served time in prison for that charge—he has consistently refused to testify in front of any forum related to this matter, even to the point that he served time in jail for contempt of court for refusing to testify after having been granted immunity in another matter in another place.

We ask you, in view of his history of refusing to testify, to require the respondent to name William Borders on his provisional witness list if in fact he intends to call Borders at trial. In this way, the committee can proceed with their deposition to determine whether Mr. Borders will refuse to testify or not; if he does refuse, then you could proceed with immunity proceedings at a very early time, rather than waiting until later and letting this matter become a reason for further delay of the entire matter.

The third procedure we ask the committee to consider involves pretrial statements—I should say the fifth procedure involves pretrial statements. The House managers urge that, when the committee sets a trial date, it should also set a date by which the parties must file pretrial statements. This is consistent with the precedents set in the Claiborne impeachment matter. The statements should include a final witness list, a brief summary of each witness' proposed testimony, a list of the exhibits that each party intends to introduce at trial, and a summary of the evidence that the parties intend to introduce in support of, or in defense to, the 17 Articles of Impeachment.

With regard to the final witness list, any person who is not listed in the pretrial statement should be allowed to testify in the party's case in chief only if the party offering that witness makes a showing of good cause for having failed to include the witness in his statement. Again, the idea is to avoid surprise. We do not want to carry on a dramatic proceeding; we simply want to be able to lay out the case before this committee, let the respondent lay out his defense, if any, and let the committee make its decision.

All of the procedures which we have suggested are consistent with the principles I mentioned in the beginning, the constitutional role of the House and the Senate that must be protected, the guarantee that the parties are fully apprised of the issues that are to be addressed at the trial, and to ensure that this takes place in a timely fashion.

In the memorandum that Mr. Anderson has submitted to this committee on behalf of Judge Hastings, he asserts that by denying his motions to dismiss, that is, when the Senate voted down his motion to dismiss several weeks ago, that the Senate, in his view, therefore established that impeachment is a civil proceeding, and he contends that for seven years his accusers have had the opportunity to prepare a case against him.

Based on these assertions, he then argues that, in fairness, the committee should grant him extensive discovery and eight more months to prepare his case. As I have emphasized, this kind of a drastic measure is completely unnecessary, because Judge Hastings has not been treated unfairly and has been given an enormous volume of data and all relevant information, with the exceptions that I mentioned a moment ago.

And for seven years, I point out, the institution that is charged with investigating the allegations collected to the best of their ability, not just the information that would prove him guilty, but all the information relevant to the charges, both exculpatory evidence and incriminating evidence. Much of the information has been provided to the judge and, in fact, as I said a moment ago, all material data has been provided to the judge with the exception of a tiny amount, and we will produce any additional material, just as we agreed to earlier.

He knows the facts of this case, and his assertion that he needs eight months to prepare his defense because of an alleged failure on the part of the House to fully investigate particular lines of inquiry, we believe to be spurious.

He says, for example, we failed to hear the testimony of witnesses which he proffered and therefore he must now conduct his own inquiry. Not speaking for all the members of the House Subcommittee on Criminal Justice, when I take strong issue with the respondent's claim, that is simply false. His representation is wrong; it is misleading. We spent over a year investigating whether or not Judge Hastings was fit to remain on the bench. As John Conyers, the chairman of our subcommittee, said, we did not go into the matter with a presumption of guilt—of course we did not—rather, we investigated all the facts and considered all of the evidence.

He did not tell this committee in his pleadings that we called two factual witnesses which he offered. There is no reason to believe that any of the other witnesses he proffered to the House and who he now wants to interview have any information at all with respect to these substantive allegations.

Let me give you an example. We called the two witnesses which he brought forth that had information on the factual matters regarding the wiretap charge, for example. The judge himself refused to come forward and testify, and then he submitted to us on a witness list almost 200 witnesses on his list. The first were a list of everybody—and that has been submitted to this committee as well—everybody who has ever appeared in any kind of a proceeding with regard to this matter, some of whom are prosecution witnesses, whom he clearly would not want to call on his own.

Then he submitted a list which I would, with only slight exaggeration, say includes nearly the entire Federal judiciary on the East Coast of the United States and the U.S. Attorneys, the Assistant Attorney General, the Chief Justice of the Supreme Court, and many others, none of whom have any information with regard to the facts of this case.

It is for the purpose of making clear that we did take his factual witnesses, and we invited him to testify, though he did not, that I make this offer of information at this time.

Finally, I want to point out that the House does not take the position with regard to whether the Senate, as a matter of discretion or policy, should award the respondent funds in this case with which to conduct his defense.

You have asked us to respond, and in a memorandum which we filed last week we did respond to his assertion that there is a constitutional principle involved here and that, as a matter of law, somehow Congress has the responsibility to provide for the cost of his defense.

We do not urge you to either provide for the cost of it or not to provide for the cost of it. But in response to your request, we would point out that there is clearly absolutely no legal requirement whatsoever that you do so, nor a constitutional requirement whatsoever that you do so. His suggestion that somehow the expense of this trial amounts to a diminution of his salary as a Federal Judge and is therefore a violation of the Constitution is clearly far outside the interpretations of that provision by the courts of this country for the last 200 years, and we urge you to refer to our brief in that regard.

That is the principal presentation which I wish to make. At this time, I would ask the committee to turn its attention to Mr. Gekas, who will conclude our presentation.

Mr. GEKAS. I thank my colleague, and to the chairman and Members of the Senate, we would offer the further explanation of the position of the managers on this set of proceedings.

The question has been raised and one of the issues which you will have to decide is a preliminary one of what rules the committee ought to adopt and then transmit on to the Senate as a whole. That, of course, will be determined on the basis of what went on before, for instance, in the Claiborne trial, and what we have almost tentatively agreed between the prosecution, as it were, the managers and the respondent, that whatever rules should be adopted, maybe they ought to follow the general tenor of the Federal Rules of Procedure, which are wider in scope and more reasonable in the admission of evidence than almost any set of State rules, shall we say, and therefore could cause itself to become a guideline for your determinations as to what rules you should follow.

Whatever rules should be adopted, we believe that the core of such rules should be the overall issue of relevance. If indeed the evidence bears some resemblance to relevancy as to the allegations that appear in our resolution on the various incidents that we outline as factual reasons for the impeachment, then that relevancy ought to bear in favor of reception of that evidence before the committee and later before the trial.

So, we believe we have drawn from the various pleadings and assertions from the defense that they subscribe to the fact that the Federal Rules might be a beginning point for the determination of what rules ought to be adopted by the committee.

The second point of presentation on our part following Mr. Bryant's projection of the managers' view is that having to do with the motion in limine which this set of managers has heretofore filed before your committee. This *motion in limine* is extremely important and it has to do not only with the merits of the presentations to be made, but also in the efficient appropriation of time, as it were, to conduct this proceeding before the committee and before the Senate.

Our *motion in limine* really asks the committee and the Senate to limit, and in other fashions, to eliminate totally from the purview of these proceedings evidence; which we feel very strongly and have reason to believe that the respondent wishes to present extrinsic evidence, for instance, the motivations, number one, are important, and the motivations of the executive in bringing the trial of Hastings to the front.

The **CHAIRMAN**. Mr. Gekas, let me just advise you that you have got about a minute left before your 30 minutes is expired.

Mr. **GEKAS**. All right.

Secondly, the Judge wants to bring evidence to bear on the motivations of the judiciary and his colleagues, his peers in the Florida setting which initiated the inquiry which led later to the referral for impeachment; and, three, he wants to bring in witnesses which can only be determined as being cumulative evidence of his character and reputation, and gives us a list, as Mr. Bryant has indicated, that would include Chief Justice Burger (Retired), and Chief Justice Rehnquist, the incumbent, of the Supreme Court of the United States.

We feel that all of this evidence, none of it is important or relevant to the facts that must be determined by this committee.

I thank the chairman and the members for allowing us to make this presentation.

The **CHAIRMAN**. Thank you, Mr. Gekas.

For members of the committee who were not here when we first began, the procedure we laid out was that we would have a half hour of argument by the House managers, we would then have a half hour of argument by the counsel for Judge Hastings, the respondent, and then we would take up to an hour or however much time the committee wants to put questions to the various counsel.

Mr. Anderson, we will go ahead and hear from you at this point.

Mr. **ANDERSON**. Thank you, Mr. Chairman. I am Terence Anderson. With me is Patricia Williams, and we are here on behalf of Judge Hastings.

Let me begin by addressing briefly Mr. Bryant's three principles, and then I will turn to specifically what I think the procedural problems of this case to date are and what needs to be done for the future.

We fully agree that the House and the Senate should observe their respective constitutional roles, but we would urge the Senate to remember that its constitutional role is different. The House serves a function analogous to that of a grand jury; it investigates; it develops evidence; it determines if there is probable cause.

In some of the remarks I have heard from the managers, both in the Senate and elsewhere, it seems as though they thought theirs was an adjudicative role, rather than merely determining if there is probable cause to go forward.

It is the Senate's job to adjudicate the facts and to decide whether the evidence that the House presents, when balanced against that which the respondent presents, warrants conviction in these proceedings. That is the first point of emphasis. You have different roles, and replicating what was done in the House is not the job which I understand to be before the Senate now.

Secondly, there is a concern about no elements of surprise. Where the possibility for surprise exists is a matter I will address in some detail. I am not in disagreement in principle that the surprise should be kept to a minimum.

Thirdly, he addressed the question of timeliness. I will talk a bit about the time that is needed, but let me use that to respond both with an illustration that addresses both Mr. Bryant's concerns and Mr. Gekas' concerns.

On the day that the Hastings inquiry ended, the House undertook hearings in the inquiry into the impeachment of Walter Nixon. Judge Nixon is a convicted judge; he is in jail. Those hearings were recessed for six months to permit Judge Nixon to seek and call before the courts the prosecutors who did that, so he could question their motives, so the record could be fully developed.

My understanding is that it was just last month that the subcommittee there determined finally to recommend the impeachment of Walter Nixon. Now, that is a year to afford the Judge, with access to the powers of the court, an opportunity to pursue matters prior to the time it comes before this body. That is a year afforded a judge who has been sitting in jail, drawing his salary, a convicted judge. That is the standard of fairness in the Walter Nixon case.

As we now emerge, it would appear that in order to have an opportunity to question the motive of your accusers, you have to be convicted; if you are acquitted, you never get the chance. This is a matter which we have been pursuing for some time, it is a matter we have been denied. It was not done at the 1983 trial, because Judge Hastings was acquitted, although the presiding judge had promised there would be a hearing in it. It is a matter which we tendered to the House two months before its inquiry, as a matter of grave concern to us, and specified in considerable detail. It was a matter we renewed at the outset of that inquiry in correspondence with the chairman of the Committee on the Judiciary and the vice chairman, it is a matter we pressed until we were rebuffed.

It is a matter that is quite clearly reflected on the provisional witness list we submitted to the House at its hearings, it is a matter that was not addressed there. It is a matter in which the judicial investigating committee and the staff of the House Impeachment Inquiry Committee examined the documents in the FBI and the Justice Department, and we have never seen them. I will address those points in some more detail, but in our view, in terms of fairness and discovery and timeliness, the standards observed in dealing with convicted judges, the acquitted judge is entitled to at least as much.

Mr. Chairman, let me try and illustrate my remarks in a way that I think may be helpful. In its submission and at the meeting last week, the House managers produced two lists, what I thought were very illustrative and useful. I know that you have them all, but I brought extra copies to be sure that they were before every member of the committee, and I brought a third list that I have prepared and, with your leave, I would like to distribute those just so as I talk you could sort of follow along the points I am trying to make.

The CHAIRMAN. Go right ahead, if you want something you want distributed.

Mr. ANDERSON. If I could.

The CHAIRMAN. Tony, do we have somebody who could distribute this?

Mr. HARVEY. Yes, sir.

RESPONDENT'S SUBMISSIONS AT THE APRIL 12, 1989, MEETING TO HEAR PRE-TRIAL ARGUMENTS

DOCUMENTS MADE AVAILABLE TO THE HOUSE OF REPRESENTATIVES IN THIS IMPEACHMENT PROCEEDING

1. Materials accompanying the Certificate of the Judicial Conference of the United States concurring in the determination of the Judicial Council of the Eleventh Circuit that impeachment of Judge Hastings may be warranted. These materials include the Report of the Eleventh Circuit Investigating Committee, 28 volumes of testimony taken by the Eleventh Circuit Investigating Committee and approximately 2800 exhibits. The House has provided Respondent with either copies of or access to these materials.

2. Record of the Eleventh Circuit Investigating Committee appointed to investigate the disclosure of confidential wiretap information. The House received these materials from Respondent.

3. Working files of John Doar, Counsel to the Eleventh Circuit Investigating Committee. These materials are described in the two orders attached as Addenda A and B to Respondent's First Request for Production of Documents and Other Tangible Material.

4. Records of Grand Jury 81-A (MIA) (investigating the bribery conspiracy) and Grand Jury 86-3 (MIA) (investigating the unauthorized disclosure of wiretap information). The House has provided both records to Respondent.

5. Records of the United States District Court for the Southern District of Florida, In the Matter of the Application of the United States of America for an Order Authorizing the Interception of Wire Communications, Misc. No. 412-Hastings, the wiretap which Respondent was supervising. Respondent has received copies of these materials.

6. Department of Justice investigative and trial files pertaining to the bribery conspiracy case and the investigation into the disclosure of confidential wiretap information. Many documents are duplicative of those contained in categories 1 and 2 above.

7. FBI investigative files and tape recordings, falling into five general categories of documents. Many documents are irrelevant to the charges contained in the Articles of Impeachment or are duplicative of documents contained in categories 1 and 2 above. The FBI redacted the documents prior to providing them to the House. Respondent has been granted access to all tape recordings. The five categories are:

[redacted]

EXHIBIT A

i) documents pertaining to the bribery conspiracy case and the investigation of the unauthorized disclosure of wiretap information, including FBI 302s, teletypes, investigative reports, surveillance records, forensic reports, administrative memoranda, transcripts of tape recordings and newspaper articles.

ii) documents pertaining to the FBI background check prior to Respondent's appointment to the Federal bench.

iii) documents pertaining to an FBI investigation of an alleged terrorist organization believed to have made threats to numerous people, including Respondent.

iv) documents pertaining to other FBI investigations that are irrelevant to the charges in the Articles of Impeachment.

v) documents pertaining to requests by the Eleventh Circuit Investigating Committee for FBI assistance in locating witnesses and documents, and conducting investigations.

NOTE: The House produced a 14 volume Statement of Information that contains all the documentary evidence it relied upon in support of Articles I through XV and XVII. The documents reproduced in the Statement were selected from the categories of documents listed above (excluding category 5) and from those independently gathered by the Subcommittee on Criminal Justice. The House Managers have provided Respondent with a copy of the complete Statement of Information.

In addition, the House has published the materials relied upon in support of Article XVI in Appendix IV to the hearings of the Subcommittee on Criminal Justice in this matter. A copy of that appendix has been provided Respondent.

Finally, the House Managers will provide Respondent with any document in its possession that falls into any of the four discovery categories proposed by the House, if the document has not already been provided.

I. DOCUMENTS PROVIDED JUDGE HASTINGS BY HOUSE

1. **House of Representatives' Statement of Information**
   [14 volumes, containing evidence relied upon by House for Articles I-XV and XVII. Provided May 9, 1988.]

2. **11th Circuit Investigating Committee Report**
   [768 pages, including appendices of evidence. Provided September 27, 1987.]

3. **11th Circuit Investigating Committee hearing transcripts**
   [28 volumes of hearing testimony. Provided April 25, 1988.]

4. **11th Circuit Investigating Committee exhibits**
   [Excluding those listed below in category II. Copied overwhelming majority of the approximate 2800 exhibits. Provided April 25, 1988.]

5. **Trial transcript of United States v. Borders**
   [Provided April 25, 1988.]

6. **Record of Grand Jury 81-A (MIA)**
   [Investigation of bribery conspiracy. Provided May 9, 1988.]

7. **Record of Grand Jury 86-3 (MIA)**
   [Investigation of wiretap leak. Provided May 9, 1988.]

8. **Court documents relating to Title III wiretap application**
   [Includes all progress reports and court orders. Provided May 9, 1988.]

9. **Diary of Assistant U.S. Attorney Roberto Martinez**
   [Relates to wiretap leak. Provided May 17, 1988.]

10. **MMAP Conference Schedule dated Sept. 6-7, 1985**
    [Provided May 17, 1988.]

11. **Kevin Gordon Plea Agreement**
    [Gordon was one of the targets on the wiretap investigation. Provided May 17, 1988.]

12. **FBI documents pertaining to wiretap investigation**
    [Redacted by House to protect individual privacy. Provided December 1988.]

13. **Miscellaneous Material printed in Appendix V to Subcommittee Hearings**
    [includes, for example, U.S. Judicial Conference certification, correspondence and staff interview of Dudley Williams (former law partner of William Borders). Provided Feb. 1989.]

II. DOCUMENTS IN HOUSE FILES TO WHICH JUDGE HASTINGS HAS BEEN GRANTED ACCESS

Judge Hastings has been granted access to the following documents and was told we would copy any pages he designated.

1. 11th Circuit Investigating Committee Exhibits that were difficult to copy

These exhibits were listed for Judge Hastings. Access granted April 25, 1988.

a)	Nos. 1-29	(Borders' message pads)
b)	No. 3001	(Hastings' 1981 court diary)
c)	No. 3002	(Betty Ann Williams' 1981 court diary)
d)	No. 3003	(Courtroom deputy's 1981 diary)
e)	Nos. 3004-5	(Hastings' message pads)
f)	No. 3006	(Betty Ann Wiliams' 1981 desk calendar)
g)	No. 3007	(" " " 1982 " ")
h)	No. 3008	(" " " 1983 " ")
i)	No. 3009	(1981 diary containing Hastings' personal travel and appointments)
j)	No. 3010	(Jan.-April 1983 diary containing Hastings' personal travel and appointments)
k)	No. 4500	(used men's purse)
l)	Nos. 1103-1653	(Hemphill Pride disciplinary file)
m)	No. 4500-A	(new men's purse)

2.	**United States v. Hastings trial transcript**	Access granted April 25, 1988
3.	**United States v. Borders trial exhibits**	
4.	**United States v. Romano trial transcript**	

Judge Hastings has also been provided access to all FBI tapes relating to the bribery conspiracy and wiretap disclosure.

III. DOCUMENTS IN HOUSE FILES NOT MADE AVAILABLE

1. **Working files of John Doar, Counsel to the 11th Cir Investigating Committee**
   We reviewed all the items listed in Exhibit 1 to the Sept. 25, 1987 Judicial Council Resolution and Exhibit 2 to the October 9, 1987 Judicial Council Resolution. We did not copy all of the documents.

2. **FBI investigative files, falling into five general categories of documents**
   Many documents are irrelevant to the charges contained in the Articles of Impeachment or are duplicative of documents already provided to Judge Hastings. The FBI redacted the documents prior to providing them to the House.

   The five categories of documents are:

   i) documents pertaining to the bribery conspiracy case and the investigation of the unauthorized disclosure of wiretap information, including FBI 302s, teletypes, investigative reports, surveillance records, forensic reports, administrative memoranda, transcripts of tape recordings and newspaper articles.

   ii) documents pertaining to the FBI background check prior to Respondent's appointment to the Federal bench.

   iii) documents pertaining to an FBI investigation of an alleged terrorist organization believed to have made threats to numerous people, including Respondent.

   iv) documents pertaining to other FBI investigations that are irrelevant to the charges in the Articles of Impeachment.

   v) documents pertaining to requests by the Eleventh Circuit Investigating Committee for FBI assistance in locating witnesses and documents, and conducting investigations.

NOTE: We have also reviewed, but at this time do not have copies of, Department of Justice investigative and trial files pertaining to the bribery conspiracy case and the investigation into the disclosure of confidential wiretap information.

NOTE: We will provide Judge Hastings with any documents listed above that fall into the 4 discovery categories proposed by the House Managers.

RESPONDENT'S NEED FOR FUNDS, TIME, AND DISCOVERY
SOME ILLUSTRATIVE MATERIALS

I. **RECORD TRANSMITTED BY THE JUDICIAL CONFERENCE OF THE UNITED STATES.**

A. Transcript of Proceedings before the 11th Circuit Investigating Committee. (House item I.3)

1. Known Record: 28 volumes
2. Supplied to Counsel for Respondent: 28 volumes
3. Not supplied to Counsel for Respondent: Sealed portion concerning William Dredge.

B. Documents and other materials received by 11th Circuit Investigating Committee and made part of its Record. (House Items I.4 and II.)

1. Known Quantity: 1229 items[1]
2. Supplied to Counsel for Respondent: 1072 items[2]
3. Not supplied: 158 items
    a. Reported quantity not supplied: 48 items
    b. Unreported Quantity not supplied: 110 items

C. Volume Analysis: Investigating Committee Index shows 8 boxes.

1. Supplied to Counsel for Respondent (Estimated): 80% of Contents (by volume) of Boxes 1, 2, and 3 or about 30% of the total.
2. Not Supplied (Estimated): Boxes 4, 5, 6, 7, and 8 plus 20% of Boxes 1, 2, and 3 or about 70% of the total.

---

[1] From daily exhibit lists. Exhibits were assigned numbers beginning with prefix "IC." In some instances, a separate IC number was assigned to each page of a document. In other instances, a single IC number was assigned to a multi-volume record. The foregoing number is based upon a manual count of the documents supplied and of the separate entries showing items not supplied.

[2] More than 30 of the items supplied were illegible in whole or in significant part or were incomplete. This number does not include an analysis of the more than 370 items related to matters not certified to the House (such as claims regarding funds raised for respondent's 1981-83 defense). A number of these were also illegible.

II. DOCUMENTS AND OTHER MATERIALS NOT MADE PART OF THE RECORD, BUT TRANSMITTED BY ORDER OF THE 11TH CIRCUIT JUDICIAL COUNCIL.[3]

A. Pursuant to Resolution dated September 25, 1987, addressed to John Doar, counsel to the Investigating Committee.

1. FBI Materials: Contacts with FBI - Vols. I - III; Oversize Documents from FBI; and Original Documents from FBI File.
2. Witness Files: 225 witness files compiled by Mr. Doar.
3. Notebooks: Eleventh Circuit Paragraph Chronology - 5 volumes; Chronology U.S. v. Thomas and Frank Romano; Digests and Summaries of pleadings and testimony in U.S. v. Hastings - 3 volumes; Day-to-Day Analysis of Activity Beginning Friday, January 2, 1981, and Concluding Tuesday, October 13, 1981; and Telephone Number Analyses of Long Distance Calls from 11 locations with supporting lists and memoranda.
4. Digest of Testimony of Witnesses Before Investigating Committee (Digests of volumes I through 25).
5. Notebook: Impeachment Material.

B. Pursuant to Resolution dated October 9, 1987, addressed to Mr. Doar.

1. File Drawer 1: U.S. v. Pride, Criminal No. 77-214, Civil Action No. 80-1649-9.
2. File Drawer 2: Exhibits from U.S. v. Borders and U.S. v. Hastings; Certain Original Exhibits; Other Complaints.
3. File Drawer 3: Delano Stewart Material; Hemphill Pride - South Carolina Disciplinary Procedures; Documents Responsive to Subpoena Served on Judicial Advisory Committee; and Hastings Discovery Material - From FBI files, Inventoried and Not Inventoried.
4. File Drawer 4: Investigating Committee Witness Digests in fourteen designated categories, and other materials.
5. File Drawer 13: Indices and Analysis of Telephone Logs; Flight Records; Materials on U.S. v. Dredge including documents received from U.S. Attorney and Judge Kauffman; and other materials.
6. File Drawer 18: Probation Files -- Thomas and Frank Romano.
7. Court Records: Apparently from litigation over Investigating Committee subpoenas to respondent's lawyers and law clerks; and
8. Miscellaneous: Drug Enforcement Agency File - Re: William Dredge; Telephone Records of Judge Hastings's chambers; other materials.

---

[3] The House Managers report that these documents were examined, but that not all were transmitted.

III. ATTORNEYS, INVESTIGATORS, AND PROFESSIONAL STAFF PARTICIPATING IN DEVELOPING THE RECORD AGAINST JUDGE HASTINGS.

A. The Original Investigation and Prosecution: July 1981 - February 1983 -- 18 months.

1. Justice Department Attorneys: Robert S. Richter and Reid Weingarten and others.
2. Federal Bureau of Investigation: Anthony Amaroso, Supervising Agent; William B. Murphy, Case Agent (Miami); Robert Forster (D.C.); and numerous additional FBI agents who played roles in the investigation.
3. Time and Resources expended: Unknown

B. The Judicial Investigation: March 1983 - August 1986 -- 39 months.[4]

1. Attorneys and Legal Assistants:[5] John Doar, Chief Counsel and Principal Investigator; Stewart Webb, Assistant Counsel and Investigator; Marta Campos, Legal Assistant; Catherine Arnold, Legal Assistant or Secretary; Joseph Sullivan, Legal Assistant; and Phyllis McKown, Legal Assistant or Secretary.
2. Investigative Assistance: William B. Murphy and an unknown number of FBI agents.[6]
3. Time and Resources:

    a. Known: Messrs. Doar and Webb devoted more than 7500 hours and received more than $800,000 in payment of fees and reimbursement for costs. Legal assistants were billed at $25 to $35 per hour; amount paid unknown.
    b. Unknown: The costs incurred by the Investigating Committee for travel and accommodation for witnesses and for transcription and other costs and the time and resources expended by the FBI and other executive agencies.

C. The Improper Disclosure Investigation: September 1985 - May 1988 -- 33 months.

1. The Executive Branch (12 months): Justice Department Attorneys Eric H. Hodder, Jr., and John M. Campbell assisted by FBI Agents Christopher Mazzella, Geoffery, and others.

---

[4] The investigation was not staffed until mid-April 1983 and the final hearings were held in early August 1986.

[5] The Justice Department appeared and provided support in collateral litigation.

[6] The number was sufficient that the FBI apparently maintained a separate category of files for "documents pertaining to requests for FBI assistance by Eleventh Circuit Investigating Committee in locating witnesses and documents, and conducting investigations."

2. The Judicial Investigation (21 months): Special Counsel Sydney O. Smith and Bernard Taylor with assistance from the FBI and others.
3. Time and Resources: Unknown

D. The House Inquiry: March 1987 - August 1988 -- 12 months.[7]

1. Five attorneys:[8] Alan I. Baron, Special Counsel, and Robert B. Levin, Janice E. Cooper, Patricia Wynn, and Lori E. Fields, Counsel.
2. Support Staff: Catherine Rucks, Legal Assistant; and Susan M. Manion, Anne I. West, and Cathy Jo Love, Clerks.
3. Time and Resources: Unknown

E. Impeachment Proceedings: August 1988 - March 1989 -- 8 months.

1. Four Attorneys: Alan I. Baron, Special Counsel; and Janice E. Cooper, Patricia Wynn, and Lori E. Fields, Assistant Special Counsel.[9]
2. Support Staff: Believed to be the same as C.2.
3. Time and Resources: Unknown

F. Summary and Overview:

1. The Past: There have been twelve (12) lawyers, no less than two (2) at any time, who have been properly compensated, well supported, and specifically assigned to direct and conduct investigations into respondent's conduct over the past 73 months. In the aggregate, the federal government has had available to it 244 months of attorney-time to develop the case to its present stage, the equivalent of more than 20 years of attorney-time.
2. The Future: The House Managers have and will have available more than 800 hours per month of properly supported attorney-time to aid them in preparing for and trying this case of impeachment.

---

[7] Special Counsel was apparently selected in May or June and thereafter assembled the rest of the staff.

[8] Five other attorneys were identified as assisting in the inquiry.

[9] Five other attorneys are identified as "House Committee Staff Participating in the Impeachment Trial Preparation."

Mr. **Anderson**. What I have had distributed first was Exhibit A to the House managers' memorandum on pretrial matters, entitled "Documents Made Available to the House of Representatives" in the impeachment proceeding.

The second is a list that they provided at our meeting with you and the vice chairman, entitled "Documents Provided Hastings by the House," it has a second part, "Documents of House Files to Which Judge Hastings Has Been Granted Access," and "Documents in the House Files Not Made Available."

The third is a document I have prepared over the weekend in Miami, entitled "Respondent's Need for Funds, Time and Discovery of Some Illustrious Material." And when the Members have those three documents before them, perhaps I could take you through them and try and illustrate the nature of the disagreements and our views.

The **Chairman**. Why not hold up just a minute while we get these put into sets so we can distribute them.

Mr. **Anderson**. Either stop the clock or I will suggest that the Hastings team——

The **Chairman**. We will give you an extra 2 minutes.

Mr. **Anderson**. Thank you.

The **Vice Chairman**. If you have papers to call to our attention, why don't you make them available to us before the proceeding starts.

Mr. **Anderson**. I understand that, Your Honor. I do not mean to be pushing it, I will try to do that to the extent possible.

[Pause.]

The **Chairman**. I think we all have at least two of the three. Do you have some extra copies of this last one, which is called "Documents Provided Judge Hastings"—well, I am not sure which one we have a shortage of. Why not go ahead and proceed. I think we have enough copies of these things, that we can at least follow your line of argument.

Mr. **Anderson**. Thank you, Mr. Chairman.

Mr. Chairman, if I might invite you to turn to the third page of the document headed "Respondent's Need for Funds, Time and Discovery," and I would like to take you briefly through the procedures that have applied today as they bear upon both the need for the Judge to be provided with funds and the kind of time that is likely to prepare this.

As the committee knows, there were 18 months between the original beginning of the original investigation of the trial of Judge Hastings in 1983. Two well-compensated attorneys, Robert Richter and Mr. Weingarten, were assigned to that matter, and they had the assistance of other Justice Department attorneys, the Federal Bureau of Investigation had Mr. Amoroso as the supervising agent, Mr. Murphy and numerous other agents.

Now, it was over that period of time that the bulk of the evidence was collected. The materials we have not gotten from that period are the materials that the House acknowledges it has examined, the Justice Department's investigative and trial files, and the FBI's investigative and trial files. Their relevance stems from the fact that 10 of the 29 of the House's witnesses are FBI and government investigative officers.

As soon as those witnesses take the stand, the credibility of each of them comes into issue. As a matter of cross-examination, I am entitled to find out whether they had a bias against this man, because they were unhappy with the assignment of the Haitian immigration case to them and certain organized crime matters. I am entitled to inquire and I submit that your constitutional role requires you to consider whether this was initiated and conducted in a manner not to determine the guilt or innocence of Alcee L. Hastings, but to create a record which will push him out. That is what judicial independence is about. Those are materials I have not seen, and that is 18 months of attorney time, paid attorney time available, supported by public funds, supported by secretaries, paralegals, and with the resources of the FBI.

After the acquittal, the matter went into the judicial investigation for 39 months. John Doar, who is known to most of you, was the chief counsel and principal investigator; Stewart Webb was the assistant—he is the partner in a Baltimore law firm—and there are listed the staff, to the extent I have been able to identify, who aided him. Again, they had the assistance of the FBI in conducting such further investigations that they thought necessary.

I emphasize, with counsel well paid and compensated, it was the decision of the investigating committee that it took 39 months to gather and review the evidence necessary to make an informed judgment—39 months. We do know, as we do not for other phases of this, we have some idea of the kinds of resources that are involved in terms of lawyer time and money.

By his testimony in the House, Mr. Doar reported that there were 7,500 hours of lawyers' time that went into the production of that material. It was reported that he and Mr. Webb received more than $800,000—$825,000, to be precise—for their time and for the costs and expenses they put out of pocket. They also reported—and I forgot to ask them how much they billed for that—that their paralegals were paid initially $25 an hour, were billed at $25 an hour, raised to $35.

We do not know how much the costs were for transcription, for witnesses and for the rest, bringing them to the hearings or the other indirect costs.

I want to make two points or, emphasize two points, when you look at Mr. Doar or Mr. Webb's time. Mr. Doar testified that he was compensated at the rate of $90 an hour and that he was paid $560,000. If my math serves me correctly, that is slightly more than 6,200 hours put in over a three-year period. Depending on whether you read about New York law firms or law firms in other areas, the estimates range of how much a lawyer can really do each year, somewhere between 1,500 and 2,500—3,000, if you push it—billable hours in a year. Over a three and a half year period, Mr. Doar was approaching 1,800 to 2,000 hours on this matter. That is just about a full-time lawyer and a very able one, at that, conducting this work.

Mr. Webb, in contrast, played a role for Mr. Doar, as near as I can tell, something like the Karr McLain firm have played for me. Over the same period, Mr. Webb, working out of his law firm, put in about 1,000 hours. That is 300 a year, perhaps, perhaps a bit more. I think he put in perhaps 1,300 hours or so in there.

The Karr firm over the past five years put in 2,000 hours. That is somewhere between five to ten percent of their professional time. Some of it comes in spurts, getting a brief out, participating in hearings, others of it can be spread. That is the kind of public interest commitment that law firms can be expected to make. The Karr firm has made it for some 25 years. They do more than that and they will continue to do it, but that is different than the kind of time one needs when you are getting ready for trial. You do not do this, writing up late in a law library or skipping papers around and trying to do it. You need concentrated time and staff. For a three-person law firm, they cannot take, depending on your estimates, three, five or more months off necessary to participate in this trial.

Mr. Chairman, I think you received their letter withdrawing their appearance in this case. The judge understands. It is a tragic loss to us, but it illustrates the point. They have been playing a role of Mr. Webb, which they could do without compensation, but they cannot do the other.

Mr. Chairman, a similar pattern, although we have a little bit less information, deals with the improper disclosure. The matter, before it went to the House, consumed some 33 months. It was within the executive branch for 12 months, from September 1985, when the government discovered a leak, until the time they certified it to the judicial investigating committee, and again there were two senior Public Integrity Section lawyers, aided by the FBI. We do know how much time and resources they had, but we just know they had 12 lawyers and publicly-funded agents and lawyers assigned to develop the case, taking whatever time they thought necessary for a decision.

In the judicial investigation, there was some 21 months. They had special counsel, Sidney O. Smith, who was a senior partner in a law firm in Atlanta and a former Federal judge himself, assisted by Bernard Taylor, one of what I understand to be his younger partners, working with the resources of a large law firm and working with the resources of the FBI and others. Again, I do not know what they were paid, but I assume that it was comparable to what Mr. Doar was paid.

During the House inquiry, which lasted 12 months—I reduce that slightly, because it took them a while to hire their staff and put it together—there were five attorneys, only four of whom, as near as I can tell, that were on the staff at any time, supported by a staff of paralegals, legal assistants and the rest. I have seen some of the appropriations figures, but the later ones combine the Nixon and Hastings inquiry, so I cannot really tell you how much pay went there.

But it is that kind of especially assigned, well-paid lawyers, with appropriate paralegal staff that have produced the 15-volume statement of information, with its copies, the hearing records and the rest of that. That is not the type of stuff you do working out of flying frequent flier miles trying to get to Washington and decide whether you should stay in Miami to write or come up here. It just is not the kind of work you can do.

Well, let me talk a bit in terms of some other volumes that have been produced. The first access I had, not copies, to the record compiled by Mr. Doar and the Judicial Investigating Committee came when the Judicial Conference permitted me to examine the evidence for a 120-day period. As a result of that 120-day period, I have prepared 189-page factual analysis. In that factual analysis, I identified specific concerns that I will turn to about the conduct of the Justice Department. I raised specifically the problem of the most probable theory, that William Dredge, a man named Joseph Nesline, who is an underworld figure, and William Borders, somehow got into a deal where they were going to broker Borders' claims that he could fix cases, not just before Judge Hastings but before a number of Federal judges.

The theory, as it goes, is that on July 8th or shortly thereafter, Mr. Dredge learned that Bill Borders was blowing smoke and could not fix a continuance with Alcee Hastings, and he wandered into the U.S. Attorneys Office and cut a deal, an international drug dealer, at one point described as having 290,000 Quaaludes in his antique shop, cut a deal in exchange for information on Alcee Hastings and Bill Borders—Alcee Hastings whom he had never met, Alcee Hastings whom he had never heard. In exchange for that deal, Mr. Dredge did not go to jail, instead, he got a plea bargain from the District of Maryland.

I want to come back, because I think that whole thing falls within a pattern I have developed in the memorandum, but I will come back to it.

Mr. Bryant has talked about how the House bent over backwards—I think I have fairly characterized the proceedings in my submission, but let me suggest that there is, in addition to the volumes they produced, there is something called Appendix III to the inquiry, and those are the submissions by Judge Hastings. Those contain our letters, shortly after special counsel was appointed, to the chairman and vice chairman, saying let us participate, you have our provisional report, there is evidence that has got to be gathered for our side, and citing precedents as to how that should be done.

We were rebuffed and we tried again in a letter of October that is in here. We were rebuffed, but to be sure that it would be fair and they would address our concerns when the subcommittee established the rules of procedure. Unfortunately, the subcommittee never established rules of procedure. In a series of meetings and telephone conversations in late April and early May, we were advised of what would or would not be, with the last phone call coming at 5:30 on the eve of the hearings, and those matters are documented in here.

The hearings here—and this is fundamental—when Mr. Bryant talks about the role of the House, let me talk also about past practice and precedent. Prior to Alcee Hastings, prior to Judge Claiborne, the House did not get prepackaged records, they had to develop them themselves. Of necessity, its members had to decide whether the evidence was credible. They did not have John Doar and five judges telling them that the evidence was credible.

So, you had a hearing room like this, as near as I can read the prior records, and the House committee charged with it required their special counsel to come forward and present the evidence they discovered, and because no one had examined it, the respondent had not presented his evidence at a trial, they invited the respondent to come forward and subpoenaed such witnesses as the respondent wanted.

As a result of that, when the House made up its mind, at that point the respondent had the House and had ~~had the~~ opportunity through those proceedings to develop evidence on his own. The House inquiry in this case did not call even the 29 witnesses whom the House now says you have to hear, many of them I never had an opportunity to cross-examine. They were done in *ex parte* proceedings. I admit, the testimony is scattered all over. They have never been examined on this side. Instead, they called John Doar as their principal witness, and William Murphy, the case agent.

Mr. Doar reported what he and the judges had heard and examined in reaching their judgment. I did have the opportunity to cross-examine him ultimately, but he is not going to be a witness here, and that was not terribly helpful.

Mr. Chairman, let me try and give you a summary of an overview, and then I will get into more specific discovery issues. Over the past, as I calculate it, there have been a total of 12 lawyers, well paid, at least well compensated or adequately, well supported, specifically assigned to direct and conduct investigation into Respondent's conduct over a 73-month period.

In the aggregate, as I multiply it out, the number of lawyers times the time, the Federal Government had available to it 244 lawyer-months or something more than the equivalent of 20 lawyer-years to prepare its case to this date. I do not maintain that they went full-time. I suspect the pattern for like Mr. Doar, who went virtually full time for 39 months, assisted by Mr. Webb, only went part-time, but that they had available, and no action before this time. If it took the Judiciary 39 months to get ready, so be it. If it took the House 39 months, so be it.

Well, what about the future? As we sit here today, Ms. Williams and I, the House has available to it, in addition to the services of its managers, four special staff assigned to this impeachment, insofar as I can tell, with the same support staff as before, plus five other lawyers who have been designated to participate in the preparation of this case.

Assuming they work diligently, and I am confident they do, that means they have 800 lawyer-hours, at least 800 lawyer-hours from this day forward to the end of the trial to prepare and get ready to proceed. There are not 800 lawyer-hours in Ms. Williams' and my time. Ms. Williams is a now far more experienced lawyer who has her own practice in Miami. Like the Karr firm, it would be economic suicide for her to simply close up shop and come up here with nothing. She has other clients to deal with and she has to be compensated. She has a daughter who is going to college in the fall. She just cannot do that. We cannot shut down.

I and Professor Robert Catz, who is with us in the audience, have a bit more flexibility. I have summer term coming up and I will just forego my paycheck, but I get paid enough as a law professor that I can take time, but I cannot fly my staff up from Miami, I cannot engage law students or lawyers to go through these documents and prepare them, and there "ain't" 800 hours of time in my hide.

Let me turn more specifically, if I could direct your attention now, to the first two pages of the illustrative list I put in, and we can go through it in terms of what you have been told by Mr. Bryant, most of which is thoroughly accurate. We have only a perception as to whether the cup is half full or half empty.

Let me start with some wisdom that was shared with me by a wiser and more experienced trial lawyer than I. In discovery, there are only two things you want, he told me. First, you tell the other side, give me everything you want me to have, then you tell the other side, give me everything you do not want me to have.

Mr. Chairman, I have been given everything they want the Judge to have, I am satisfied with that, no question, they have given me that. That statement of information is the prosecution's case in essence. I do not think there will be many surprises for Judge Hastings in that—15 volumes, but that was designed to support a judgment that the impeachment should proceed. That is the prosecutor's analysis of the evidence. That statement of information does not have complete documents often, it may have one page from a long-distance telephone record or something like that, but it has what the prosecution has. What I do not have is what I need.

Let me be more concrete: If you look at Point 1 on respondent's needs for funds time, the records that were transmitted by the Judicial Conference of the United States back in 1987—Mr. Bryant is quite correct, I have 28 volumes of transcript—those were given to me. The only part of those that I do not have is a sealed portion that was sealed by the Investigating Committee concerning the testimony regarding William Dredge, the informant, who is rather central to my case. Quantitatively, I think that is probably about a quarter of the three inches.

Second, the documents and other materials: There has been confusion. Mr. Doar's paralegal gave us the figure of 2,800 exhibits, and that is how many of these IC numbers are consumed, or thereabouts.

I went down over the weekend and I hand-counted the entries day by day, and I came up with 1,229 items. I could be plus or off two or three. I received 1,072 of them, and it is a lot of documents, hard reading. It fills box, that part. The quantity I have not received is 158 items. Now, 40 of those items are the items described on the Senate's list of materials to which I have had access but not been supplied; the 110 are things that I assume were omitted in the copy procedure, which I do not have.

Now, let us talk about the stacks and the volume analysis. In terms of content, the Investigating Committee transmitted an index by boxes the materials it was sending over, showing the content of each. As nearly as I can tell, I have 80 percent of the contents by volume of Boxes 1, 2 and 3, about 30 percent of the total. What I do not have are the contents of Boxes 5, 6, 7, 8, plus about 20 percent of Boxes 1 and 2. What I do not have by volume is about 70 percent of the total.

Mr. Bryant has quite accurately indicated that seven years after the fact the Judge does not have his courtroom diary back, and he has pointed out that there are numerous volumes of these telephone records from Bill Borders' phone office. However, if you have read the House of Representatives' statement of facts in its brief or its committee report, you will understand that the nature of the circumstantial case is one where they are resting their case in part, as far as I can tell, on a pattern of contacts, so they reconstruct who called whom on what day; who traveled where on what day; did they possibly intersect; if they intersect, should we infer they talked, if we infer they talked, should we infer they talked about the conspiracy or some other event, and how do we build it into a pattern.

Without Mr. Borders' phone logs, I cannot really construct. It is the sound of one hand clapping. I have a lot of telephone records. Surprisingly, Judge Hastings' phone records were among the documents not sent to me, but I need these to put the pattern together.

Now, interspersed in here, which I have had, there is no question, are a paragraph assertion, something to the effect that there was a phone call made from Judge Hastings' phone to Mr. Borders' office on February 20th or something, 1981, and the documents supporting that will be one piece of paper, one sheet of this, perhaps one sheet of a long-distance phone bill.

Let me give you another illustration. I went through and in my provisional report I developed the pattern of contacts totally consistent with the innocence. For example, in the February—I may have the date wrong, if it was the 19th or whatever—there is a phone call from Judge Hastings to Mr. Borders' office, something happened to the Romano case. One can draw the inference that maybe they talked, and then one can ask what did they talk about. That weekend, however, the Judicial Conference of the National Bar Association was holding its annual meeting down in Miami, Florida. Bill Borders was president of the National Bar Association, and Alcee Hastings was the keynote speaker. One could speculate what they talked about, but you need those documents, the correspondence and the agenda and the other stuff, and they are not in this. They are documents I have. It is what I do not have that is my concern right now.

Similarly, there is a May contact, that is the month of May. Judge Hastings had been in April two proposals for the NBA annual meeting, one of which was that Mr. Borders use his relationship with former President Carter and Griffin Bell and throw an honor dinner honoring them, a fund-raiser, at the NBA Convention, with the proceeds to go to the Judicial Council.

At the same time of these conversations in May, there was an NBA Executive Committee meeting, as far as I can tell from the records, on the West Coast, and if you go through this message book for that period, you will find calls from Judge Matthew Perry and a variety of other distinguished folks. Well, you have the page that shows the phone call from Alcee Hastings in a statement of information, but you do not have the pages that show the phone calls from Matthew Perry.

Now, I did this manually myself, because the access that was imposed upon me by the Judicial Conference did not let me make copies or take staff, but I——

The CHAIRMAN. Mr. Anderson, let me just interrupt to advise you that you have got about 3 minutes left before your 30 minutes have expired.

Mr. **Anderson**. Mr. Chairman, that is what I do not have under Point 1 of the record that was transmitted. Let me briefly take you through two other matters.

If you look at the description by the House of the record received by it, you will find that they report they examined Mr. Doar's working files. If you look at Point 2 on my illustrative documents, you will find out what was in those working files. They are the FBI documents, three volumes, oversized documents and others, 225 witness files. I know who the witnesses are. I want to know who else has been talked to. I know who ours were at trial, but they have now said there is new evidence. I want to rebut their new evidence, not the evidence that was presented at trial, if it exists.

There is a lot of Mr. Doar's. I am–not asking for the House's working product. I am asking for Mr. Doar's. I do not think Mr. Doar had to give that to me, but he has given it to them. With their four lawyers, with their year, with their eight months to date in these proceedings, they have had Mr. Doar's day-by-day chronology, they have had his digests, his summaries, his analysis and his paralegals. I do not have paralegals. If the work product of the predecessor is to be shared, let us share it all round.

If Mr. Doar's work product, the analysis he prepared, is to be shared, let us give it to the unfunded lawyers, rather than simply using it as a base for the well-funded lawyers to rebuild. And then the file drawers, what could conceivably be relevant in those file drawers? In my provisional report in January of 1987, I reported that there was testimony in the record by Steve Allen, the prosecutor for Dredge, who was not happy with having to give his case away. He reported that he had been told at the outset that the decision on this one was made by Rudolph Giuliani. Mr. Giuliani was responsible for the Immigration and Naturalization Service, he was responsible for the case which ultimately went to the Supreme Court that was then before Judge Hastings.

Mr. Allen also reported that by the end of the plea bargain and the proceedings and after the leak, his file, in view of Chief Judge Kaufman, was so significant and was going to be necessary in future proceedings, that it ought to be sent down to main Justice to be securely preserved. That bears upon Dredge, that bears upon the motive.

I learned for the first time when I saw it in the Judicial Conference, Mr. Doar apparently got that file and it is in one of those file drawers that is described in these papers. I gather that the House impeachment staff have examined it, but I have never seen it. I have been asking for it since 1987.

Mr. Chairman, let me summarize. We need compensation and we need time. We do not need 20 years of lawyering time, but we need more than 800 hours a month, and we need time to spend it.

I thank the committee for their attention. Perhaps in response to questions, I can address your concerns.

The **Chairman**. Thank you very much, Mr. Anderson.

The Senate is in the middle of a vote. We have about 11 minutes until that vote is closed out. The House has a vote which is just imminent. Why don't we come back and try to begin at quarter of 4:00, if the House can get back that quickly and the Senate as well, and we will proceed with questions of both counsel at that time.

Mr. **Bryant**. Mr. Chairman, for the committee's information, we have a live-and-five vote, that is, we are going to vote and we will have another vote right behind it, and it may take a little longer than usual.

The **Chairman**. Well, we will wait until the House managers are here, but please hurry as much as you can.

Thank you.

[Recess.]

The **Chairman**. We will call the committee back in session.

I guess my hope is that we can complete our questions of both the House managers and counsel for Judge Hastings here at least in the hour, that is the time we have set for it. In order to do that, I have asked the staff to notify me at the end of 5 minutes. I will ask questions for five minutes, then defer to Senator Specter to do the same, and the first round we will try to keep to about 5 minutes per Senator. At the end of that, if we still have additional time, we can go back and do another round of questions. But I think in order that we have a chance for each Senator to ask questions, I think that might be the way to proceed.

I would first ask the House managers, Mr. Bryant or Mr. Gekas, either one, do you have in your possession materials, documents that you are willing to deliver or make available to Mr. Anderson that you have not made available to him as of yet?

Mr. **Bryant**. Mr. Chairman, the answer is yes.

The **Chairman**. Why is that you have not made those available?

Mr. **Bryant**. We have in our possession—we have had access to, we do not have in our possession, we have only had access to the Department of Justice files and, as we have said, we are willing, if you order us to or ask us to, we are willing to take it upon ourselves to provide him with the materials in the four categories which we mentioned initially, which is in the Department of Justice files. We do not particularly want to be the editors of this, but we are willing to do that, if you ask us to do so.

The **Chairman**. I would also ask the House managers, one of the arguments being made by Mr. Anderson, as I understood it, was that the respondent did not have adequate opportunity to participate fully in the hearing that was held before the House, and I would be interested in your response to that.

Mr. **Bryant**. Mr. Chairman, he has not mentioned that prior to this century, impeachments were completely **ex parte** in nature, and even when the respondent was present, he and his counsel were never given a role that Judge Hastings demanded, even in the impeachment proceedings involving President Nixon. In fact, we had quite a debate among the members of the subcommittee about the extent of access which we should give him, when the chairman of the subcommittee insisted upon giving him the very liberal access which he had. In fact, we gave him the opportunity to bring witnesses forward, and the two which he brought forward which had any relevant evidence and were allowed to testify, we asked him to testify and he refused to do so. These other witnesses—I urge you to look at the list of them—are just out of the question. The Chief Justice of the United States, the former Chief Justice, none of them have any evidence with regard to this matter.

Mr. **Gekas**. In addition, Mr. Chairman, not only was he given access to testify, but he was given the opportunity, which he used, to make an opening statement to the subcommittee, also unprecedented.

Mr. **Bryant**. He is referring to Judge Hastings himself.

Mr. **Gekas**. Judge Hastings himself made an opening statement. Furthermore, he was given the opportunity to cross-examine these witnesses. That is unprecedented and far more access at that stage of the proceeding than anyone has ever been given.

The **Chairman**. Mr. Anderson, you make a substantial argument about the failure or the inadequate opportunity you have had to prepare and understand the nature of the case. As I understand it, the committee that the Judicial Conference put together, the group that the Judicial Conference put together, when it decided to go forward with its proceedings, you were granted an opportunity to participate in those proceedings, Judge Hastings was, and refused to do so or waived the right to do so, maybe is a more accurate statement. Could you explain if that is the case and, if so, what your thinking was and if that does not weaken your argument at this stage that you have not had adequate opportunity to be involved in the previous proceedings?

Mr. **Anderson**. Mr. Chairman, of course I will explain. I do not think it does weaken the argument. There was a decision in the United States Supreme Court in the early seventies, *Chandler* v. *Judicial Council,* of the Tenth Circuit. Judge Chandler asked the Supreme Court to review an action of the Judicial Council there suspending case assignments. The Court declined to grant review on three separate grounds, but one of those grounds was that Judge Chandler, by participating in the administrative proceedings, must now be required to exhaust his representations before his constitutional claims could be heard.

We filed our suit more than a year before the committee announced that it was holding hearings. It had been briefed, argued and decided in the trial court; it had been briefed and argued orally in the Court of Appeals. It was while the matter was under decision that we were invited to participate in those proceedings.

It was my judgment, rightly or wrongly, as the law stood, that if we engaged in the administrative proceeding, we would go into a Catch 22. Under the statute we were challenging, as you know, the courts are prohibited from reviewing a determination made in the proceeding, and therefore if we submit it, the decision would not be reviewable, at least under one view of the case; on the other hand, if we submit it, the courts could decline to grant our challenge or to consider it on the ground we had to exhaust our administrative remedies before the case came before it. So, I do not think we were given a fair opportunity there to do it. We were challenging the right under the Constitution to impose these burdens on the Federal judge and we could not participate and challenge both.

The **Chairman**. My five minutes is up. Senator Specter, go ahead.

The **Vice Chairman**. Thank you, Mr. Chairman.

We obviously have very tight time constraints, because of the press of other business, intervening votes and so forth. I have three areas of inquiry and they are all for you, Mr. Anderson.

One area of inquiry is why is the motive relevant? If you have a case of prosecutorial misconduct in a criminal matter, it may result in the dismissal of the charges, but if Judge Hastings is guilty of the offenses alleged, it seems highly doubtful to me that under any theory we are going to leave him on the bench, so that the first question is, in the context of this impeachment proceeding, why is motive relevant?

The second question I have—I am going to ask my three questions and yield the balance of my time to you, Mr. Anderson—the second question I have is: After listening to your description of discovery, I would like to know what discovery or documents do you want specifically.

And the third inquiry is on the time that you talk about. You make a compelling statement about all the time spent by a lot of other people, but we all know what it is for a prosecution that is opposed to a defense and the gathering of a case, and my specific question is—there are really two parts—how much time do you want, and in support of the specific request for time, what do you propose to do with it by way of specific trial preparation? That, of course, is going to depend on how we answer the second question as to what you get by way of discovery.

Mr. ANDERSON. Senator, let me start with the question of why is motive relevant. Ten of the 29 witnesses the government is calling are FBI or Justice Department personnel, and their credibility will be an issue. A vast quantity of the documents we are dealing with here are reports, telexes from the FBI, surveillance logs reconstructed, and most importantly, what are called FBI 302 memoranda, namely an FBI report of what a witness or a person interviewed told him.

If either institutionally at the level of the Justice Department or the FBI there was a motive to try and get the Judge off the bench, quite apart from the due process or prosecutorial misconduct case, it alters the credibility that you, as a Senator, can give their testimony. If, for example, William Murphy was the case agent, and I was operating under a mandate to make a circumstantial case that would get Judge Hastings out of——

The VICE CHAIRMAN. Solely on credibility?

Mr. ANDERSON. Primarily on credibility. I would like to debate with you the question about the constitutional role of the Senate, but I think that is something which, when we get to a particular stage of the trial, the committee might have to confront. We want to let the respondent go further.

The VICE CHAIRMAN. Well, I would think we would be prepared to listen to arguments of bias or motivation on credibility, but that does not really go to the blanket issue of motivation.

Mr. ANDERSON. Well, improper motivation——

The VICE CHAIRMAN. I mean for improper motivation to bring the charges.

Mr. ANDERSON. Well, if there is an improper motivation—you have to understand, this is not unlike—let me take the Claiborne precedent, where you had Judge Claiborne's tax return, his account, and the government's motivation, he could make the argument they inadequately went through the administrative proceeding, but that was the accountant, that was the tax return that Judge Claiborne once signed, that was a direct evidence case.

Here you are talking about reports of events. At all stages, they said this is a circumstantial case. This is not a case where we have Judge Hastings' tax return and will prove it is false. It is all circumstantial; it is being reconstructed by descriptions given by other people. The motive of the people preparing the descriptions, any motive other than a normal prosecutorial desire to get to the truth I think undermines the credibility of the circumstances they put there, and I need to examine, in terms of returning to your specific discovery.

The critical first phase, it seems to me—and I can go down the list—are the FBI and the Justice Department files in the form they assembled them. I quite agree with Mr. Bryant, I really do not want the House and their staff to have to edit them for me; I want to see the sequence of events as it unfolded there, to find out if there is evidence of improper motive that I could use on cross-examination or that I could use by bringing forward witnesses who would undermine the credibility of witnesses you heard during their case-in-chief. But I want to look at those first.

In terms of real specifics, on List 2 of mine, documents that the Judicial Council examined and that the House have examined, let me direct you to what Mr. Doar describes as File Drawer 13, is Item B-5 on my list: Materials on *United States* v. *Dredge,* including documents received from U.S. Attorney and Judge Kaufman. Now, those are materials that go both to the theory I have been advancing since I filed by provisional report involving Dredge; it also goes to what instructions had been given the plea bargainers, was Mr. Allen put on a short string in terms of these bargains. Those are materials that Mr. Allen testified that Judge Kaufman, who declined to vote in the Judicial Conference, he was a member, he recused himself on the grounds that he had information. Those have been flagged, big red flag, and those are important materials. I have not seen them. I want them.

In terms of under Item B-8, Miscellaneous: Drug Enforcement Agency File Re: William Dredge. The House in its report to the Judiciary describes this man as a long-time criminal, a burglar, a drug dealer, and a fence. I want to know what is there, because William Dredge's connections within the underworld go directly to this circumstantial case that I have already constructed in my report in terms of his involvement with Joseph Nesline, another not very pleasant person in Washington, by all reports, and what they were doing with William Borders.

In terms of time as it bears upon discovery, if you look at Mr. Doar's list of notebooks that he prepared, you have a series of day-by-day analysis of pleading activities, beginning January 2, 1981, and October 13, 1981, and then telephone records analysis. I need the diary and I need all of those phone records to construct it, and I really would be uncomfortable trying to do it—first, I do not have the time to do it myself; I need paralegals or someone to break those down for me, but I cannot very well do that in their office.

In terms of the amount of time, when I have the records, I think I am not being unfair when I say there are 4,000 hours of lawyering time necessary to get us from here to there.

The Vice Chairman. Mr. Anderson, let me just interrupt to ask the House managers one thing. They have a vote. Is it possible for us to continue with questions that the committee would have of Mr. Anderson, at least with your counsel present?

Mr. Bryant. Yes, it is, Mr. Chairman.

The Vice Chairman. And then we will hold off on questions to the House managers themselves until you return. All right, why don't you continue and complete this answer, and then Senator Pryor is the next questioner.

Mr. Anderson. Senator Specter, I think I am being conservative when I say it would take 4,000 hours. I have estimated that it would take somewhere between 2,200 and 2,400 to get ready for the trial and the balance I am allowing for participating in evidentiary hearings and then for post-trial submissions and that kind of thing. I need enough time before trial to spend that wisely, and that is partially a function of funding. I need to get organized and to have the staff, I need to have it in Washington, I have got to stop operating out of Miami, and I need to simply have people who can put together our 15 volumes and organize them so that we can give you a sense of coherent, ordered presentation.

The Chairman. Senator Pryor.

Senator Pryor. Excuse me, is this Mr. Baron?

Mr. Baron. Yes, sir.

The Chairman. If you could limit your questions to Mr. Anderson at this point, and then once the House Members return, we will ask them the questions and will come back around the committee.

Senator Pryor. Mr. Anderson, are there specific documents—you have a long list of documents here—are there specific documents that are in the possession of or under the control of the House of Representatives at this time which you have specifically requested which have been denied?

Mr. Anderson. Mr. Chairman, I put in a very detailed request early in the proceedings, a first request for production of documents. It was in response to that, I got no documents in response to it, and in their response they announced the four categories of documents they had provided or would make available.

Senator Pryor. Was any reason given why documents that you requested were not made available to you?

Mr. Anderson. If I understand—I do not like to characterize the House's view of this—but if I understand, their view is they have given me all the evidence that they think is relevant to prove their case, and they are reserving the right to decide what is exculpatory or not exculpatory and that is all I am entitled to. The discovery and impeachment is unprecedented, they claim, and I think it is, but I think the way this case has been handled to date is also unprecedented. I do not want to put words—they filed a memorandum, it is just unprecedented, and it should not be done, and they have given me everything they want to use, and they cannot understand why I want anything to use myself.

Senator Pryor. Mr. Chairman, I have not used all of my time, and maybe I can reserve the balance of it and we can go to the next questioner.

The Chairman. Okay. Senator Durenberger.

Senator **Durenberger**. Mr. Anderson, I am curious, I know you are searching for opportunity in a variety of ways, but I think I, at least need some response from the other side as well to clarify, to go back and clarify some of the questions.

On the issue of financial opportunity to do what needs to be done for your client, I may have missed it somewhere, but where is the precedent in the impeachment proceedings for the government financing the representation of the respondent in a case like this?

Mr. **Anderson**. Absolutely none, Senator. We are asking you to do it. But let me emphasize, there is no precedent for an inquiry beginning after an acquittal, there is no precedent for an impeachment after acquittal, there is no precedent for a trial. The 1980 Act, Judge Hastings was the first one which that was applied to.

In my view, what is happening is simply you are demonstrating that the powers exist in the three branches to drive a Federal judge from office. I ask you to view it from the future and I ask you to view it from the standpoint of a Federal judge. If in point of fact there are three bites at the apple, if in point of fact you are looking at seven or eight years of proceedings, if in point of fact you are looking at the need to have, there have been precisely in the past more than seven years now six weeks, during the trial and for the six weeks thereafter, that I have not actually been involved for Judge Hastings. You impose a burden on the bar, you impose a burden on the accused judge.

We have now come into the 20th Century, and I just do not think judges can absorb what you are putting on them. But no, you are quite correct, it has never been done. The source where I think it should come from is Article III.

Senator **Durenberger**. My second question of you—and I know you are not as familiar as we are with the way in which procedures like this are being interrupted continually, although you are quickly getting acquainted, unless you watched Iran-Contra—when you came in here today, had you formed in your own mind any estimate of the approximate amount of time it will take for these proceedings?

Mr. **Anderson**. In our pretrial memorandum, we had asked from the date that funds and the documents in the possession of the House there, we had asked for 180 days so we could take depositions of witnesses we identified. Let me emphasize just on that point, there is a vast amount of testimony that has been taken by the other side, most of which is unexamined or cross-examined by us, as well as additional witnesses.

But I would emphasize, in terms of somewhere along the line of 180 days, I do not know that I need all of that. It bears partially in terms of funds, in terms of how many people are working on this case.

Senator **Durenberger**. Is that the pretrial proceedings, or is that the pretrial proceedings and the trial itself?

Mr. **Anderson**. Those are the pretrial proceedings, but with funds and enough lawyers to do it. There are 20 lawyer-years that have been made available to get this case ready on the other side. We are not asking for that. We are not asking for the 12. We are not even asking for the eight months the House has continued——

Senator **Durenberger**. How about the trial itself, what is your view of the length of time that would take?

Mr. **Anderson**. After today, I just do not know in terms of the way this is going. The House estimated I think that it would take 12 to 15 full trial days, which I am accustomed to courtroom proceedings running about seven hours of uninterrupted proceedings a day. We estimated in the Rules Committee that it would take not less than that for us to present our response, and I assume that the managers will have rebuttal, and surrebuttal will go on. I think you are looking at somewhere 200 to 300 hours of trial time. As you say, you would all know better than I how many of actual on-the-stand, how many days that spreads over. I do not know.

Senator **Durenberger**. I recall your case, you estimated it to take 12 to 15——

Mr. **Anderson**. The House estimated to take 12 to 15, and at this stage the best I could do when I was before the Rules Committee was estimate that we would want equal time.

Senator **Durenberger**. Thank you.

The **Chairman**. Senator Bryan.

Senator **Bryan**. Thank you, Mr. Chairman.

Mr. Anderson, when did you first become involved with this case and be retained as counsel?

Mr. **Anderson**. If you mean retained in the sense of compensated, never. I became involved within days after the indictment was returned.

Senator **Bryan**. And refresh my memory, I know you have provided that information in the record, but when did that occur?

Mr. **Anderson**. December 29, 1981.

Senator **Bryan**. So, from December 29, 1981, down to and including the present date, you have participated in various stages of the proceedings that affect Judge Hastings?

Mr. **Anderson**. I did not participate. Ms. Williams and Judge Hastings conducted the trial themselves. For the period from 1981 to the end of 1982, I was litigating the issue of whether the Constitution requires that impeachment and trial precede criminal prosecution or whether it was permissible. That is the extent of my involvement there. The first time I saw the evidence was during the 120-day window of access that the Judicial Conference made available to me in 1986.

Senator **Bryan**. Mr. Anderson, some of us have had experience in criminal proceedings representing defendants, never perhaps at the level which you are now appearing representing the judge, but the resources that the prosecutor, whether it be the Federal Government or the State agencies, have available in almost every circumstance far exceeds the ability of the defense to marshal. Are you suggesting that in your request for counsel and your request for additional staffing and funds that we should give a rough equivalency to what the Federal Government has had available at the various stages of these proceedings? If not, precisely what are you seeking and what do you want us to approve?

Mr. **Anderson**. What I want you to approve is compensation for lawyer time. We have something over 1,500 hours now. We estimate another 4,000 is there. In informal discussions with Senate legal counsel, I talked about the rate which Mr. Doar was paid.

That, I would emphasize, would be a fraction of what has been consumed on the government side before. In terms of costs, I want the ability to come up here and have office space available to me, have hopefully one or two paralegals, have some secretaries, have room for Ms. Williams, Professor Catz, and be able to pay my hotel bill on something other than long lines of credit. I am not sure that is fully responsive, but that is what I want.

The argument that was made in the one law review article that came out right after the Nixon inquiry, was that roughly you should provide—that was in the context of a President—parity of the resources that the House themselves undertook. In this case, it is a staff of four, with whatever other contributions are being and a support staff. I would like that. I am trying to be helpful to you, but there is just—and let me respond to—and I do not mean to be sensitive, but I acknowledge that impeachments are *sui generis*, they are unique proceedings, but somehow it feels an awful lot like when we are talking about the judge's rights, the metaphor is to criminal proceedings, and when we are talking about the Judge's claims in other contexts, they are totally non-criminal proceedings.

I think this proceeding changes the nature. Judge Hastings has borne the very powerful resources of a prosecutor once. We are back here again, and if it isn't double jeopardy, it is a retrial. The other side has had an awful lot of power to gain and gather additional evidence. I am suggesting you cannot permit the same imbalance the second time around, without saying whether it's criminal or civil. Something has to, on the second time around, give.

Senator BRYAN. And the other question that I have, as you described the nature of the discovery that you are requesting, and there's been colloquy back and forth in terms of the reasons why the House managers have refused to release some documents to you.

My question, more precisely, in light of the statement that Mr. Bryant made earlier during today's proceedings, are there any documents, any information which has promised to you today that have not previously been promised that might help us to focus more narrowly on the scope of your request, in terms of your discovery?

Mr. ANDERSON. Let me be very focused, Senator, if I can. I want copies of—and I realize it's an incredible burden on the staff—of the materials they say they have made available. I simply cannot afford to fly up from Miami and sit in their office. I cannot give this stuff to staff; I cannot work on it.

Senator BRYAN. And do they object to providing copies?

Mr. ANDERSON. Yes, sir—well, they say if I come into their office and read it and dog-ear pages or something, they will give me the pages. I want a complete set of data to work on on my own.

Senator BRYAN. What I am trying to understand, do they object—if, for example, if you had the resources, hypothetically——

Mr. ANDERSON. I would send in a team of paralegals with a xerox machine and——

Senator BRYAN. Would they object under those circumstances to you copying the documents?

Mr. ANDERSON. I do not think so. We are talking about——

Senator **Bryan**. So the limitation is not their willingness; it is your inability, from your perspective, to be able to afford to have someone come in and copy those documents; is that it?

Mr. **Anderson**. You are quite correct. Give me the resources.

Senator **Bryan**. Okay. Thank you.

Mr. **Anderson**. The next category I want is the FBI files, the Justice Department files. Those are the next sources.

Senator **Bryan**. Thank you, Mr. Chairman.

The **Chairman**. Senator Rudman.

Senator **Rudman**. Thank you, Mr. Chairman.

Mr. Anderson, coming back to your discussion on motivation as it relates to relevancy, I want to ask you this question: how long did the trial last itself, the criminal trial?

Mr. **Anderson**. I believe it was two-and-a-half weeks.

Senator **Rudman**. And the proceedings in the 11th Circuit, although you didn't participate, I assume that someone observed those in your behalf?

Mr. **Anderson**. No.

Senator **Rudman**. Nobody was even there?

Mr. **Anderson**. No.

Senator **Rudman**. But you have examined the records of those?

Mr. **Anderson**. I have seen the transcript of the proceedings, yes, sir.

Senator **Rudman**. In all of that, the two-and-a-half weeks and the transcripts, have you some evidence that relates to the motivation of some of the people that were involved in this trial for the Government?

Mr. **Anderson**. Yes, sir.

Senator **Rudman**. You do?

Mr. **Anderson**. Yes, sir.

Senator **Rudman**. Which people?

Mr. **Anderson**. Let me give you illustrations because they permeate this record—I mean, they are not secret.

In the first instance, there is evidence that Mr. Guiliani was involved in the decision-making process to go forward against Judge Hastings, virtually on day one.

In the second instance, there is also evidence the FBI had an open investigation against other Federal judges and in no case did they target the judge as a part of the investigative target. They had targeted only Mr. Borders.

In the third instance, one of the strangest things that any prosecutor has considered was the decision of the Government to arrest Mr. Borders at the scene of the payoff, rather than letting him take the money to see if any would go to Judge Hastings. That fairly stunned, I think, even those who—it raised a real question. Through the process of discovery, it was not available to Judge Hastings at trial. There came out that that had been planned in advance. It was presented at trial as "Oh, golly, we sort of panicked, or we were afraid that Borders would invite him to go away, we were concerned about his safety"—a variety of explanations. It now comes out that that was planned in advance. They set it up to arrest Borders at the scene.

In the third instance, William Dredge, who features so prominently in the Judiciary's report of its investigation, Judge Hastings and Ms. Williams spent 12 months trying to locate him and filed a motion asking the court to produce Mr. Dredge as a material witness. The prosecutor represented he was not material, they did not know where he was, and the Judge, on that representation, Judge Gignoux—who apparently had some conversations with Judge Kaufman, I do not know—denied the motion.

It turns out that Judge Gignoux also, on that basis, excluded—favored the Government on its objection, prohibiting Judge Hastings from doing this rainmaking defense, introducing evidence that there are lawyers out there who make unfounded claims over judges, and he ruled that unless Judge Hastings could produce one witness who would show that Borders had made claims with respect to other persons other than Judge Hastings, judges other than Judge Hastings, he could not present that evidence.

William Dredge was that witness. The Government must have knowingly represented that a witness who had information material to the defense was not a material defense and thereby precluded Judge Hastings from presenting a significant defense at his trial.

Something is wrong. These were not—Mr. Weingarten participated in Abscam, he was the chief prosecutor for Judge Nixon. Mr. Richter was deputy chief of the section and has since gone on the bench. These are not kinds of errors that can just be written off to young assistant state attorneys in their enthusiasm. It was a misrepresentation made there and it is not the type of thing a lawyer would likely do. I want to know why. I think it bears on the credibility——

Senator Rudman. I have read that part of the record, and I do not think you have been responsive to my question. I understand all that. What I do not understand is how that proves motivation that is relevant. I do not understand that. I mean, I can see that you could draw all sorts of suppositions from it; I assume you could bring the witness up and say "were you motivated to get the judge?", and I would expect he would say no.

What I want to know is, do you have any proof that you can corroborate in any way, other than the way you have just described it to me, that there is motivation on the part of anyone to "get" your client? I guess that is what I am asking.

Mr. Anderson. Let me try and clarify it in two ways. All I can make now are circumstantial cases. I can show what cases were of direct national and policy importance that were before Judge Hastings when this was authorized. I can show—not show yet, but there is an indication that the person who authorized an investigation directly to the judge was the person responsible for those policy cases.

Senator Rudman. Well, we expect Mr. Guiliani, if he were called, would probably, considering where he was at the time, would probably testify that yes, he was aware of it, it would have to be cleared with him, and yes, he directed it.

Now, what would that prove in terms of motivation?

Mr. Anderson. Well, the second part of my response, before I can prove something in terms of motivation, I have got to be able to cross-examine, I have got to find out what notes are in the file.

Senator Rudman. All right. You have answered my question. I want to ask you on your list here, other witnesses with material information. Can you tell me on Judge Battisti, Judge Lord, Judge Carr, those three judges——

Mr. ANDERSON. I have not submitted those to the Senate. I did want them there, yes, because I felt the House had a constitutional role——

Senator RUDMAN. Do they have material information that you know of?

Mr. ANDERSON. They have material information that bears, I think, on the conduct of the Judicial investigation, as opposed to the executive.

Senator RUDMAN. Again, motivation?

Mr. ANDERSON. Senator, at this stage, I am not claiming they will be relevant or seeking to examine them in this proceeding. I did in the House.

Senator RUDMAN. The problem I have, Mr. Anderson—and this is my last comment—but in trying to be fair and make sure there is both actual and procedural due process, is that as I look at this witness list, it is about as broad a net as you can cast of everybody in the world that might have been related in some way and might have some motivation that might reflect on fairness, which might then be relevant. Obviously, the Senate cannot, in my view, hear all of those witnesses.

The question then is, if you have evidence, even if it is circumstantial, which is what I would call directed circumstantial evidence, I would like you to submit that to us to help us make our decision. Because if you're telling us you want to interview everybody that had the most tangential connection with this case, to determine whether or not there may have been motivation, I do not think we are going to grant that request—at least I would not vote for that. You have got to show me something more than that, speaking only for myself.

Mr. ANDERSON. May I respond briefly, Senator?

Senator RUDMAN. You certainly can.

Mr. ANDERSON. First of all, I hope we are looking at the same list. I attached an edited version of the House list to my reply, which does not have Judge Battisti, Judge Lord, or any of those people——

Senator RUDMAN. Well, I have all of your list, Mr. Anderson—and I do not know what the latest one is. But I guess I have the latest one.

Mr. ANDERSON. This is the one I submitted in reply——

Senator RUDMAN. Right.

Mr. ANDERSON [continuing]. To this committee, and it is a far narrower list.

My second concern is, we have been denied, because Judge Hastings was acquitted—unlike Judge Nixon—we have not been able to ask the questions or take the depositions necessary to find out, because the House did not call them——

I mean, all of this stuff, you are asking me to give you evidence before I have had a chance to discover it. The judge, because of his acquittal, has been denied the rights that Judge Nixon and ultimately Judge Claiborne were granted. I do not think it is fair to deprive an acquitted judge of rights you grant a convicted judge.

Senator **Rudman**. Discovery, even in the Federal system, Mr. Chairman, is fairly broad, but it tends to have some meaning before it is granted, as the professor knows probably better than I. But Mr. Dredge is a different class from everybody else on the list and we do not understand that.

Thank you, Mr. Chairman.

The **Chairman**. Senator Kerrey.

Senator **Kerrey**. Mr. Anderson, just so I get this straight—and I apologize for coming back, as this question may have already been asked.

You seem to be saying that the evidence that you need, at least to a certain extent, is available; you just cannot afford to transcribe it or copy it and get it into your hands, is that it?

Mr. **Anderson**. That is one category of it, yes, sir.

Senator **Kerrey**. Then there is a large category of evidence and the plea is essentially poverty, then, that you are making before us; you cannot afford to do the copying required to get the evidence in a convenient way so that you can do an evaluation of it, is that correct?

Mr. **Anderson**. Yeah, I suppose. Yeah. I've got four children. I teach at law school in Miami. Over the course of the past seven years, Senator, I have put two of them through college. They work fairly hard at it, another one plugging away, and the fourth one making up his mind. I cannot fly up here and run a xerox machine.

Senator **Kerrey**. You need not feel as if I am trying to——

Mr. **Anderson**. No.

Senator **Kerrey** [continuing]. Trying to put you in a position where you have to lay out the details of your tuition with your children.

Mr. **Anderson**. No, I am happy to plead it.

Senator **Kerrey**. I am trying to understand, because as I originally understood it, it was not that at all. Apparently there are two categories that you are talking about. One—well, it is three categories. I see three fingers up.

As I understand it, category number one now is evidence that is available to you but the copying charges are in excess of what you can afford. Category number two is evidence or information that does not fall in any one of the four categories that is judged to be of interest to you. And category number three is what?

Mr. **Anderson**. Well, category number three is depositions of persons like Mr. Dredge and witnesses who would be identified in category number two.

Category number one, it is not that I cannot afford the copying. I cannot afford to send the staff over and hire them to make the copies, as well as the copying charges. Category number two is materials we have identified as existing, FBI files, Justice Department files, a massive category—I think a massive category. I do not know because it is not on the House's inventory. They have been taking depositions of people *ex parte* both before and after the Articles of Impeachment. I do not even know who they deposed, let alone what the transcripts are. I do not know whether I am looking at another 28 volumes.

Once I have those, once that has been done, witnesses such as the ones who are appended to my reply in the FBI and Justice Department chain of command, Mr. Dredge, Mr. Nesline, if he is still alive, and persons who will be identified from that who have potentially exculpatory evidence or evidence in support of our theory of the case. I would then like to be able to take discovery, and I think it makes sense to the Senate as well as fairness to Judge Hastings that we have, from our view, a transcript of their proceedings, just as the House has a transcript of its testimony, in preparing for trial, rather than trying to do discovery in the middle of these proceedings.

Senator Kerrey. Let me ask you to comment on a suspicion that I have—and I appreciate that it might be groundless.

I become suspicious when I look at this letter from John Karr, that he and Mr. McLain and Miss Richardson withdrew from the case. There is almost a matter of convenience here. I mean, they have been on this thing a long time, and now it is coming to the point where it is appearing before the Senate and they are saying—it is almost like we are starting all over again in the presentation of the evidence of defense.

Mr. Anderson. Almost as a point of personal privilege, let me address that.

John Karr is known in this town. He has practiced for 25 years, and he has taken cases that no one else has taken and handled them without cost. He is not withdrawing for that reason. The timing is fine. That is when it comes. He is withdrawing because the nature of the time required for trial preparation and trial is different in kind.

His 2,000 hours have been spread over five years. His firm can absorb 400 hours a year. They spend more than that on public interest matters. To prepare for trial, you are now, as the House has, looking at a block of lawyers who have got to stop everything. Miss Williams, or someone, has to close down—if you are going to have a trial here with the judge, someone has got to close down the shop. There have to be four lawyers who start and say go, and do it full time.

Mr. Karr could not effectively aid. He will not, to put it somewhat differently, participate in the trial where his participation would be a sham. It would create the appearance of, "My god, three more lawyers. Look at all the lawyers on the Hastings defense team," when in fact he has a practice to maintain.

I really hope I can assuage your suspicion, sir. A three-person law firm cannot do what needs to be done between now and trial and keep open its doors.

The Chairman. Let me go on to Senator Bond, since the five minutes is up. We will come back and others will have a chance to ask additional questions. Senator Bond.

Senator Bond. Thank you, Mr. Chairman.

Mr. Anderson, there was some discussion by representatives of the House about the difficulties we might have if certain witnesses were going to be called, and it was suggested by them that we be given a list of witnesses.

Do you now know if you would plan to call Mr. Borders or Mr. Dredge?

Mr. **Anderson**. Certainly Mr. Dredge. I want to depose him, and certainly, if his memory is still adequate, I want to try Mr. Nesline. Phillip Moscatto is another one who is identified in that chain of communication with the Romanos. Out of them, there may be two or three others. Mrs. Rebecca Nesline was the wife, and I think Mrs. Romano is still alive.

I would anticipate that most, if not all, of those persons may have to have their testimony compelled.

I am not trying to play games with you on whether to call Borders. Our information is that, like the House, he won't testify in any event. Our information is, which Mr. Doar acknowledged was plausible, that there is a concern over his physical well-being which will keep him from testifying. In part, I do not think Judge Hastings is willing to take on that kind of risk. We thought it should have been done in the House, was going to be done, but in part, it will depend on how things evolve when we are ready for trial—do we really need him, and to the extent that we can find out from talking to his counsel or others; is there any chance that we will get him.

Senator **Bond**. Did I understand you to have expressed an intention not to agree to any stipulation of facts? Are you prepared to stipulate to facts?

Mr. **Anderson**. Well, let me talk about two categories, documents and facts. I want a full deck before I get into the stipulation business. I do not want to try to stipulate to facts when I am not sure that I know what is in the other side's hand. So, in that sense, I have said that, at least until discovery is complete, I think stipulations are premature. I think that is true in virtually any kind of case.

In terms of documents, I am sure we will yell and shout at each other and may need some intervention, but on a lot of the documents, yes, there will be stipulations. I have no desire to bore you or myself or anyone else with the tedium of that.

There are going to be some documents where I will not stipulate. William Dredge's phone numbers, they're listed in a different name. I do not know where the name came from.

There are aspects of the phone records that are somewhat different in 1981 than they are now, and I am probably going to want someone to bring up a witness so that that is clear to the committee because I think it makes a difference.

Most of the facts, as I read them now—and I can engage in that process—are matters that are shown by the documents and are simply a marshalling of the House's evidence. They stipulate a portion of the transcript in the judge's trial.

The judge testified to this. They are simply breaking out the drama of the evidence. The entire transcript is going to come in, and I take it, after the proceedings are over, you are going to invite us to submit post-trial proposed findings. So I do not think those things would be in dispute, but the consequences of stipulating to a lot of the things is simply to give the House a chance to order the evidence in its view.

It also relates, however, to the question of time. Senate legal counsel invited our attention to a process that Judge Harold H. Greene had used to produce a set of negotiated stipulations, which

I thought was quite proper. But again, in terms of the time you allot me, if there are people who can sit down and spend the time necessary to negotiate stipulations that are fair to both sides, there will be stipulations. If you say we are going to trial very quickly, then please do not take what little time you are giving me and suggest that I spend it bargaining or redrafting statements of the facts or rewriting things. I mean, I will do it, but that will not make the trial fair.

So I think that yes, we are prepared to try and negotiate a set of working stipulations. I anticipate there will be stipulations on documents. I am not sure—I would have to be satisfied that the stipulations on facts are balanced both ways, and that will be a hard negotiation process. There may well be some. But I think we are putting the cart before the horse if we do not have a chance to prepare our multi-volume statement of information and get our ducks in a row. Then we can sit down and do it.

Senator BOND. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lieberman.

Senator LIEBERMAN. Mr. Chairman, one of the advantages, I suppose, of a lack of seniority is that most of the questions I had in mind have been asked already, but I will ask one question of you, Mr. Anderson.

If, as I understood from your earlier statements, that your main concern—at least one of your main concerns for gaining access to the additional files that you want at the Department of Justice, FBI and John Doar's files, is to attack the credibility of the House witnesses. Is there a way to limit your discovery to documents that are relevant to the witnesses that are listed by the House?

Mr. ANDERSON. Senator, my problem is that the House has made its case, and I do not know—I am unwilling, and I do not think you would find many lawyers, who will let opposing counsel edit and make the determination as to relevance. The traditional standard in discovery is information that is relevant or may lead to evidence that is relevant and admissible.

Certainly there are ways. We could have an informal procedure where materials over which there was a fight as to whether I should get them or not would be submitted to the Chair or some small portion of this committee for in camera inspection. But Mr. Sullivan is not satisfied with Mr. Walsh and the executive branch deciding which of the executive documents he gets to see, and Mr. Walsh has some problems with all of them. I think the Justice Department may have some problems with it.

Either I need them, as in civil discovery, all, or if there are other interests, you need a mechanism whereby this group or some portion will make the decision.

Senator LIEBERMAN. Mr. Chairman, is it appropriate to ask questions of the House managers and other——

The CHAIRMAN. Yes, it certainly is.

Senator LIEBERMAN. Let me pose this question to try to get, if I may, Mr. Bryant, an underpinning of one of your arguments here. Perhaps I can pose it hypothetically.

Why not give Judge Hastings complete access to the documents that you have gathered with a time limit on the access? Is there any harm or risk in that procedure?

Mr. **Bryant**. Well, first of all, Senator, we have provided him already with everything material to this case, except those things which were difficult to copy, and offered a year ago to copy them and provide them to him. I am astonished, as I listen to counsel for the respondent talk about the cost of xeroxing. I have got in my hands here a letter dated April 25, 1988, the last paragraph of which says, "As to the items listed on Schedule A—" which are these items "we have agreed that you will review them and advise us which pages you wish to have copied." There has never once been any kind of an issue raised with regard to the cost of making copies, and it is——

Senator **Lieberman**. That remains the position of the House, I take it, that——

Mr. **Bryant**. That is correct.

Senator **Lieberman** [continuing]. That there is no problem in providing copies.

Mr. **Bryant**. I should clarify that we have provided copies or access to all documents that are a part of the case, including ones from the Doar working files and the FBI files, which were a part of this case. We still maintain that allowing anyone to review every document which has been viewed by the other side of the case is completely outside the scope of what happens in a criminal case or a civil case.

I would like to expand by just simply saying this. His theory today—I think it is important to back out of this maze and look at the whole picture for a moment—is that somehow the House of Representatives and all of the judges of the Eleventh Judicial District and the Judicial Conference of the United States have in their possession documents and evidence which would exonerate his defendant.

That strains the imagination to begin with. It is impossible for that to be the case. But second, even if it were the case, which I would urge you to understand that if it were the case, we would not be here today; we have no desire to spend our time doing this. But even if it were the case, we will be under a mandate, according to what we proposed to the Senate, to provide him with any exculpatory evidence, all the statements of witnesses that we would call forward, so he could test their veracity against what they said before. That is all anyone ever gets in a criminal case, and this is not a criminal case.

Senator **Lieberman**. Let me pose the question—and I appreciate your answer—in a somewhat different way.

Is part of the reason why you object to their request for additional documents that you view it as a delaying tactic?

Mr. **Bryant**. Our view is that it cannot be anything more than a delaying tactic, for the reason that we have just told you. He knows very well we have no documents that exonerate his defendant. We would be under a very common mandate to produce them if we did have them. Frankly, if we did have them, why in the world would we be here today?

We did not want to spend the last two years working on this matter. The Judicial Conference did not want to do this; the Eleventh Circuit did not want to do this. At every stage he has been unanimously either impeached or they have voted to send the case over to the House for impeachment consideration.

Finally, in the House of Representatives, the vote was 413 to 3. I just suggest to you that he desires to present you with a picture that we have all kinds of files and stuff that he could look into and find evidence. That is impossible.

Look at this stuff. Just thousands and thousands of pages. Our entire case, annotated with exhibits referred to, he knows what the foundation of every piece of evidence which we will offer will be. As a lawyer, and I would suggest Mr. Specter or anybody else that has tried cases, they have never had that kind of look at the other side's case before the presentation started.

Senator LIEBERMAN. Let me come at it one final time—and again, you have been responsive; I do not mean to say you have not been. But let me ask the question this way—since this is a central request of Judge Hastings, what would be lost by giving him this additional information?

Mr. BRYANT. Remember, here we are talking about, first of all, the work product of our staff on the House side. That is obviously a serious constitutional problem, as well as something that is never even considered in a court proceeding, criminal or civil.

Second, we are talking about documents that have been provided to us by the Federal Bureau of Investigation and by the investigating committee of the Judicial District. We have already provided him with everything out of those two sources which bear on this case and which have been used.

We are also talking about the working files of the Department of Justice. We submit to you that it is simply wrong to establish a precedent whereby anyone who is brought before the Senate in an impeachment case has the right to rifle through the entire files, everything relevant or not, of all branches of Government, as a simple precedent.

Senator LIEBERMAN. Thank you.

The CHAIRMAN. Senator Gorton.

Senator GORTON. Mr. Anderson, can you enlighten me? What is fundamentally your defense in this case? Is it the Judge did not do the things of which he is accused, or that it does not matter whether he did them?

Mr. ANDERSON. Our defense is that he did not do them. Senator, so fundamental to what both Mr. Bryant and I are saying, this is a circumstantial case. No one, other than, I suppose, Judge Hastings and Bill Borders, will ever know to a certainty what did happen. Judge Hastings has denied, on both the main counts, the bribery conspiracy one and the other, from the outset, that he did not do it.

There have been proceedings. The Borders trial, where the Judge was not present; the Investigating Committee proceeding, where he was not present; the House inquiry, where he might well not be. In each case they found that there is enough evidence, and we concede, to create great suspicion.

In the one proceeding, where he was tried, he took the stand and said he was not and gave explanations and they were believed.

That is his position. He is innocent. It is not that it does not matter. He is innocent of all the charges against him.

I understand the managers have given me a vast volume of material. Lord knows, I understand that. The problem is, what they have done, as I understand their case, is they have tried to take additional events that the prosecutor knew about but did not—and marshal them to say "Look, here are the circumstances. He made this phone call on February 20th, he made that phone call here; he was in Washington on this date, he was there, so can't you now see a stronger pattern?"

I do not claim, and I am not looking for, evidence that will "directly exonerate" the judge. They are creating this pattern that says it looks like he is guilty. I am seeking the opportunity to go beyond the original record now to meet their so-called new claims, as to what was going on on February 2nd or February 20th or whatever date they think is there.

But yes, Judge Hastings is, in the jury's view, in the view of many who know him, an innocent man, where circumstances have been manipulated to cast suspicion. I am trying to get at the——

Senator GORTON. If your defense, therefore, is at least primarily factual in this connection, and assuming that you have been involved in it, as you have said you have, for I gather eight years—if I remember 1981 as being the beginning of all of this—and if, without regard to what you think you might discover but have not discovered yet, you have available to you—and I think you have probably come as close as any individual in memorizing what is in those books that are available to you—why is it that you answered Senator Bond that at this point, regardless of whatever facts may be in dispute, there are not a wide range of facts to which you can stipulate at this point?

Mr. ANDERSON. Senator, there may be a wide range of facts at the point when I am satisfied I know exactly how we want to meet the expanded record. It will simply be a time-consuming process.

The managers' proposed stipulations I can appreciate, like any lawyer trying to get stipulations on facts marshalled in such a way as to persuade you the judge is guilty. I can come up with a set of proposed stipulations on behalf of the judge which will marshal the facts in such a way as in my view will persuade you he is innocent. The House will not accept mine any more than—as I recall, the statement of facts was in our original brief. You can compare the two statements of facts, the one which the manager submitted and appended to their brief on the motions to dismiss, with mine.

I would trust, when you read mine, you would wonder why is this case here if those are the facts. There are different views of that evidence, and there are inferences. It is going to be for the Senate to reach the inferences. I think we will reach agreements if we are given adequate discovery in time. We can negotiate our stipulations.

Senator GORTON. Mr. Chairman, do I have time for one more question?

The CHAIRMAN. Yes, go right ahead.

Senator GORTON. Also, in answer to some earlier questions, you strongly emphasized the number of lawyer hours or lawyer years which had been devoted at one point or another to the other side of this case. That, of course, includes everything that led up to the criminal trial, everything which took place in the Eleventh Circuit and the like.

How would you characterize or compare the hours and familiarity with this record which you have been able to attain over this eight-year period as against the House managers of this impeachment?

Mr. ANDERSON. In two ways. Mine is reactive. I do not have the subpoena power either to induce people to talk with me and interview with me or to bring them in. So I have been looking at what has been given to me, in the order it has been given to me, rather than in its original form. So yes, I think I have familiarity. It really is too much for one person to carry in his or her head. But there is familiarity with that, but it is not as developed.

Secondly, in terms of the nature of the job that now needs to be done—I guess I would ask you to trust me. I work pretty hard. I can write briefs, I have an adequate support staff in Miami to get them typed, copied and do the legal research. That is one kind of lawyering time. Another kind of lawyering time is sitting in a documents room with transcripts of all the deposition and witness statements and beginning to organize something for trial. I have not had that kind of time, I have not had all the documents, and I still do not have them all in one room, where you try and put together the pieces of puzzle and say here is the most plausible theory to present, here are how you put the witnesses and the documents together, here is the sequence in which you present them in a coherent fashion.

Many of the witness statements, all of the Investigating Committee ones, whatever the House gives me, will be people I have not examined. The function of a deposition is usually you define the universe, to use Mr. Bryan's, to avoid surprise, by cross-examination or otherwise, I now know within this little transmit just about a response to any question that this witness could be asked and answered, and I know that we can make him come out with those answers here, then I can plan a direct examination or a cross-examination with sense. If I only have the first half of the deposition, without knowing what the response to the other questions are, it is much harder to prepare. So, am I familiar with those materials? Yes, I think intimately.

The CHAIRMAN. Senator Burns.

Senator BURNS. Thank you, Mr. Chairman. I have but one question, it seems like, and I am still confused on this, after going through some of this material and then listening to some summations. I have a question of Mr. Bryant and the managers.

In this proceeding, as we go along, will you present new evidence, either in form of new witnesses or new information that has been gained after the civil trial, will you be presenting to us?

Mr. BRYANT. What you made reference to after the civil trial, I am not sure what——

Senator BURNS. After the civil trial which was held on Judge Hastings.

Mr. BRYANT. You mean when he was tried criminally?

Senator BURNS. Yes.

Mr. **Bryant**. Yes, Senator, we will. We will bring forth—let me emphasize, what we have proposed to the Senate is that we be required to lay out our case way ahead of time, to list all of the witnesses, we have asked for stipulations on facts, to provide what the witnesses are going to say when they testify, so there is no surprise whatsoever.

Of course, much has been since developed since the trial in which he was acquitted, and that presentation was presented to the House of Representatives and that is why we impeached Judge Hastings.

I would emphasize to you, as you listen to Mr. Anderson talk about preparation, something that has not been referred to here today is the fact that sitting here to his right is Ms. Patricia Williams. She was the trial counsel at Judge Hastings' trial. Furthermore, not counted in this computation of hours is the number of hours that were spent by this side of the trial bench watching Mr. Borders' trial, in which he was convicted and sent to prison and found to have engaged in conspiracy with Judge Hastings to accept a bribe. They have an enormous amount of time and an enormous opportunity to prepare this case.

The presentation being made today is astonishing to the House managers, let me say it that way, to be as respectful as possible.

Senator **Burns**. I have no other questions.

The **Chairman**. Thank you, Senator Burns.

I gather, just from the questions that went around the first time, that there are still some questions that Senators would like to ask. Is that the case? Does anybody have additional questions? Senator Specter, did you have additional questions?

The **Vice Chairman**. Well, there is one subject that I would like to pursue briefly, and that is the timing. It seems to this Senator unlikely that the committee is going to give you 4,000 hours of time. We are looking at a schedule, trying to be fair to Judge Hastings, still trying to get our work done with some manageable parameters, and trying to consider how we can conclude the work in a reasonable period of time, speaking for this Senator, at least by the end of the First Session or by the end of this year, and I think there will be many who will want to establish a timetable which is much tighter than that.

But if you work backwards, the Senate is going to be out of session in October and we look at a hearing schedule in advance of that time, and if you do get substantial documents at your disposal, which my inclination would be to let you have, but you have to do it yourself or with co-counsel in a limited way—how much can you really do yourself? You are making an unprecedented request for compensation which—again, speaking for myself—I think it is unlikely that you are going to have awarded. We are not going to be sitting down again to decide these matters before the committee makes a decision.

What I am groping for here, really, is if we start this trial on June 1st or thereabouts, you are in one posture. Does it make a whole lot of difference to you if you have 30 additional days or if you have 60 additional days?

Mr. **Anderson**. Yes, 30 or 60—let me start, Senator, with the funds question. I understand your inclination, your disposition. I do not think at this stage—and I want to say this as sincerely as possible—that you can have a trial that is fair to the judge. We are looking at $50,000 in hotel accommodations and travel bills, just to come up here for the length of time you are talking about. I think you can do that to an $89,000 a year judge. Judge Hastings' indigence was accepted by the trial judge enough that he picked up some of the costs, so I think compensation is fairly crucial.

Time—we will make use of——

The VICE CHAIRMAN. On the subject of compensation, this issue has been addressed, as I understand it, to the Rules Committee which declined to act. There is even a question as to our authority, and the whole issue of compensation in this context is unprecedented. It is within the experience of many of us from this panel that defense counsel was not provided the indigence. *Gideon* v. *Wainwright* is a 1963 opinion. For years, we did it wrong, we did not provide counsel to defendants who were on their way to jail, and here we have a Federal judge, we have a different kind of a proceeding—I just question the reality of it, that is why I am groping to get some semblance as to whether it will help us significantly to have 30 additional days or 60 additional days or what you can really accomplish in that time frame if you do not have money to pay for substantial additional help.

Mr. ANDERSON. What you are looking at, Senator, is yes, you are giving me—I am and will continue and have adjusted my schedule such that I can go somewhere between 200 and 300 hours a month, and if you give me 30 additional days, you give me 200 to 300 additional hours of trial preparation. If you give me 60, you have doubled that. If you give me the discovery early and let me take depositions, will I have spent 4,000 hours? No, there are not that many in my hide. Ms. Williams still will have an obligation to maintain her practice but, as was mentioned, she was trial counsel. What she does not have is this additional stuff which they suggested they have that needs to be ordered. She will make the time, and she works very hard.

But without funds, I have a real problem and I would just invite you to consider. It is past 1963, it is now 1989; you have a Federal judiciary; you set up a mechanism, the Judicial Conduct Act; you have permitted criminal prosecutions to precede these things; you have seen that out of the—at least under current prosecutorial policy, there is one judge waiting in the wings, this is the second one before you; there is this Act; I think it may be time. I agree that it may be beyond the authority of the committee, but I would hope you would ask the Senate to rule on our motion one way or the other.

The CHAIRMAN. Are there other questions by the committee before we end this and do some deliberating ourselves?

[No response.]

The CHAIRMAN. I would like to bring up one other item, while we are in open session, because we will be in closed session when we deliberate. While we are in open session, I would like to get the committee to authorize the chairman to issue a statement in the nature of an order disposing of those things we agree to dispose of in writing to the parties at some time in the future once we have had a chance to deliberate on this, so we do not have to come back into open session.

Senator **Rudman**. I so move, Mr. Chairman.

Senator **Lieberman**. Second.

The **Chairman**. Okay. All in favor, signify by saying "aye."

[A chorus of "ayes."]

The **Chairman**. Does counsel have anything else that is urgent that needs to be considered?

Mr. **Anderson**. Just in terms of planning our travel schedules, does the Chair have a sense of should we await an order, or is this likely to——

The **Chairman**. I would suggest that it is unlikely that we will have anything to give to counsel today, more likely tomorrow or sometime later in the week.

Mr. **Bryant**. Mr. Chairman, as previously stated, these exhibits will remain on the desk for the committee members to examine, so that you will see with your own eyes exactly what we have been talking about.

The **Chairman**. All right. We thank counsel for both the House and the Respondent.

[Whereupon, at 5:06 p.m., the committee was adjourned, subject to the call of the Chair.]

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-6471
TELECOPIER: (202) 224-6677

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-002D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Thursday, April 13, 1989

With due notice, the committee met in closed session to deliberate upon the pretrial issues argued upon by the parties on April 12, 1989.

The committee decided to defer action concerning Judge Alcee L. Hastings' motion for defense funds.

The committee will request Judge Hastings to submit a witness list by April 19, 1989.

The committee disposed of the House managers' motion in limine to exclude evidence of the motivation of five categories of persons as follows:

Category 1 -- Persons who investigated and prosecuted Judge Hastings in his 1983 criminal trial. Motion as to this category is denied at this time.

Categories 2 and 4 -- Persons who investigated him in connection with the Judicial Council investigations on both the bribery and wiretap disclosure matters. Motion as to this category is granted at this time.

Category 3 -- Persons who investigated matters addressed by the Grand Jury regarding the alleged wiretap disclosure. Motion as to this category is denied at this time.

Category 5 -- Character witnesses. Motion as to this category is denied at this time.

DISCOVERY. The committee disposed of issues regarding discovery as follows:

a) The committee shall recommend that the House provide copies of all documents requested by Judge Hastings to which the House has no objection on the basis of content.

b) The House shall provide, by April 21, all exculpatory materials, certain prior statements of witnesses, and documents and other tangible evidence to be introduced in evidence, which the House has not yet provided to Judge Hastings.

c) The House shall respond, by May 3, to Judge Hastings' specific request for documents which the House has obtained from elsewhere in the government.

d) Judge Hastings shall identify the specific records that are germane to issues in these proceedings and submit such request to the House by April 26.

e) Any requests by Judge Hastings for documents from the Department of Justice or the Investigating Committee shall be made by April 26.

f) Judge Hastings shall provide his reciprocal discovery to the House by May 10, including all documents, tapes, and other evidence to be offered in evidence.

DEPOSITION. The committee shall defer action on Judge Hastings' request for depositions until it receives from him a prioritized list of proposed deponents, a proffer of the testimony he expects to elicit from each proposed deponent and the relevance thereof, whether any prior testimony or statement provided by each proposed deponent, and whether Judge Hastings has exhausted all means of obtaining voluntary information. Such submission is due on April 28, 1989, if Judge Hastings wishes to pursue his request for depositions.

STIPULATIONS. The committee shall accept the House managers' proposal that the Senate adopt a rule that any proposed stipulation of fact will be accepted as true absent written objection and a proffer as to why the proposed stipulations should not be taken as true. The proposed parallel rule on authenticity of documents shall be accepted as well.

Isabel T. McVeigh

Isabel T. McVeigh
Journal Clerk

COMMITTEE ACTION: FIRST ORDER

United States Senate
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE

DISPOSITION OF PRETRIAL ISSUES

Upon consideration of the written submissions of the parties on pretrial issues and the oral argument on April 12, 1989, the committee has authorized the chair to issue the following rulings on behalf of the committee:

Preliminary Witness Lists

First, on three occasions, beginning on August 10, 1988, the Committee on Rules and Administration asked the parties for preliminary lists of witnesses with a description of the general nature of the testimony that is expected from each witness. The Rules Committee expressly stated that neither side would be precluded, by the submission of this preliminary information, from requesting subpoenas for other witnesses. On September 6, 1988, the House submitted a list of twenty-three witnesses that it anticipates calling. The House briefly described the nature of each witness's proposed testimony. On January 17, 1989, the House supplemented that list with six additional witnesses. Judge Hastings did not provide to the Rules Committee a list of his proposed witnesses in these Senate proceedings. Neither has Judge Hastings provided to this committee a preliminary list of the witnesses that he intends to call before us, other than to refer to material which he had provided last year to a subcommittee of the House Committee on the Judiciary.

98-109 O—89——10

It is imperative that Judge Hastings now provide his preliminary witness list without any further delay. The committee requires the list in order to complete its consideration of pretrial issues, including the fixing of an appropriate date to begin evidentiary hearings. Accordingly, Judge Hastings is directed to provide to the committee by noon on April 19, 1989, a preliminary witness list that identifies in good faith the witnesses that he intends to call before this committee. The witness list should also briefly state, in detail comparable to that already provided by the House for its anticipated witnesses, the nature of the testimony that Judge Hastings expects each listed witness would provide. This is to be a preliminary list. Judge Hastings may add, by showing good cause for not including them on the preliminary list, additional names when he submits his final witness list. In the absence of a showing of good cause, the committee may exclude the testimony of any witness who is not listed and described in the preliminary witness list.

The House has indicated that it may have additional witnesses. To the extent that those additional witnesses are now known to the House, the House should supplement its preliminary list by noon on April 19, 1989.

Motion In Limine

Second, the House has moved in limine to exclude five categories of evidence as irrelevant.

The first category concerns the motivations of persons who investigated Judge Hastings in 1981 and then who prosecuted him in United States v. Hastings, Cr. No. 81-596-Cr-ETG. The third category concerns the motivations of persons who investigated the matters addressed by Grand Jury No. 86-3 (Miami) concerning the alleged disclosure by Judge Hastings of confidential wiretap information.

Judge Hastings correctly notes that the House has placed on its witness list several assistant United States attorneys and agents of the Federal Bureau of Investigation who would testify in connection with either the bribery and perjury allegations or the wiretap matter. Judge Hastings asserts that the House motion is premature. He also asserts that he should be able to inquire into the motivation and bias of the witnesses against him. As Judge Hastings has asserted a tenable basis for some degree of latitude in cross-examining the witnesses that the House will call, the committee denies at this time this portion of the House's motion. To the extent that Judge Hastings proposes to inquire into the motivations of persons who investigated and prosecuted him for a purpose other than impeaching witnesses that the House will call, the House motion is premature in the absence of a firm indication from Judge Hastings, through the filing of a witness list, that he intends to call any such witnesses. We wish to make clear nonetheless that our denial at this time of this portion of the House motion should not be understood to invite an open-ended inquiry into the motivations of federal prosecutors and investigators. Rather, any such inquiry must be limited to evidence that the investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Hastings' guilt or innocence.

Categories two and four concern the motivations of persons who initiated, investigated, and considered the complaints that were filed against Judge Hastings in March, 1983, and September, 1986, with the Eleventh Circuit under the Judicial Conduct and Disability Act of 1980. Judge Hastings contends that this aspect of the House motion also is premature.

The issues that are presented by the articles concern Judge Hastings' conduct, not the conduct of members of the judicial branch or persons employed by it. Judge Hastings has made no showing that evidence in categories two and four would be relevant to the articles of impeachment. Moreover, a grant of the House motion with respect to categories two and four should help to focus the parties' preparation for trial on issues that will be germane to the Senate's consideration of the articles. The motion to exclude evidence of the matters described in categories two and four is granted.

The fifth category in the House motion in limine is cumulative evidence on Judge Hastings' general character and reputation. We agree with Judge Hastings that this portion of the House motion in limine is premature. We expect that Judge Hastings will be mindful of the limitations that the committee placed on the number of character witnesses, and the total length of character testimony, in the Claiborne proceedings, and that, in composing his witness list, Judge Hastings will recognize the need to avoid cumulative evidence. We can address at a later date any question which arises about the need to impose limits on that testimony.

Documentary Discovery

Third, Judge Hastings has moved for extensive pretrial discovery. He advocates that discovery be based on contemporary ideas about discovery in federal civil judicial proceedings. The House has proposed a scope of discovery that is modeled to a greater extent on federal criminal judicial proceedings. The House proposes to provide to Judge Hastings any exculpatory evidence that it possesses. The House also proposes that each party provide to the other party the documents that it proposes to offer in evidence, prior sworn, adopted, or approved statements of witnesses that each proposes to call, and substantially verbatim and contemporaneously recorded statements of witnesses that each intends to call. The discovery proposed by the House should be completed as promptly as possible. We reject, however, the divergent theoretical limits -- expansive in Judge Hastings' view and constricted in the House's view -- that each side has advocated.

The House has expressed a concern about one House of Congress directing another House to produce records. We need not address at this time whether the Senate has that power in an impeachment proceeding, because we think that it should be sufficient to state principles and a schedule to guide these proceedings:

(a) To the extent that the parties have had a disagreement about photocopying, we recommend to the House that the issue be resolved in Judge Hastings' favor and that the House provide to Judge Hastings copies of all documents that the House has no objection to providing on the basis of their content. To facilitate Judge Hastings' response to the House's proposed stipulations, a matter that will be discussed below, the House should provide those copies by April 21, 1989, a week from today's order.

(b) The House -- which has proposed to provide exculpatory materials, certain prior statements of witnesses, and documents and other tangible evidence that it intends to introduce in evidence -- has indicated that it has provided most but not all of that material to Judge Hastings. The House would like to defer further production until it receives equivalent material from Judge Hastings. We will be requiring comparable disclosure by Judge Hastings, but the production to Judge Hastings should not be delayed while that occurs. Again, because we will be requiring responses to the House's proposed stipulations, the House should provide this material to Judge Hastings by April 21.

(c) Concerning other documents, the sharing of information should be guided by a broader principle than that advanced by the House in its offer to provide exculpatory evidence and the prior sworn, adopted, approved, or substantially verbatim and contemporaneously recorded statements of witnesses. In addition to the interests of the House in its role as advocate for the articles of impeachment and the interests of Judge Hastings in defending against those articles, the Senate has an interest in the development of a record that fully illuminates the matters that it must consider in rendering a judgment that under the Constitution only the Senate may make. We therefore ask the House -- for documents that it has obtained from elsewhere in the government that are responsive to a particularized request from Judge Hastings -- to determine whether there are specific objections, such as the need to honor promised confidences to people who may be at risk, to production to

Judge Hastings. In the absence of specific objections by the House or by the governmental entity that provided the material to the House, which should be articulated in writing so that the parties and the committee may be apprised of them, the special constitutional process that we are now engaged in will be served best by the fullest disclosure possible. It may be that for some documents an appropriate course of action would be to provide them to the committee for an evaluation of their sensitive nature, if any, and a determination by the committee whether any restrictions should be placed on the terms of access to them. Again, because of the schedule that will be set forth below for responses to stipulations, the House should respond by May 3.

(d) Judge Hastings also has a burden that he has not yet met. It will be necessary for him to do more than simply demand everything that other people have. In order to facilitate the process that we are asking the House and the other branches to undertake, Judge Hastings should identify, with far greater particularity than he has to date, the records that are germane to issues in these proceedings. Also, if it would be of assistance to the holders of documents in determining their responses, he should articulate to them the basis for his requests. To enable the House to respond by May 3, Judge Hastings should submit his particularized requests by April 26.

(e) Neither the Department of Justice nor the counsel or the members of the Investigating Committee of the Judicial Council of the Eleventh Circuit are before us. If Judge Hastings has requests for documents from either the Department, including the Federal Bureau of Investigations, or the Judicial Council, he should promptly make particularized requests to them by April 26. With knowledge of the committee's interest in the fullest disclosure possible, we would appreciate knowing of the Department's and the Council's responses at the earliest possible time.

(f) Judge Hastings should provide his reciprocal discovery to the House by May 10, including all documents, tapes, and other tangible evidence he intends to offer in evidence, and sworn, adopted, approved, or substantially verbatim statements of witnesses that Judge Hastings intends to call.

Depositions

Fourth, Judge Hastings has asked that the Senate utilize its subpoena power to enable him to take depositions in advance of the committee's hearings. He has attached to his most recent request a list, which he has denominated a provisional list, of twenty-four Department of Justice attorneys and Federal Bureau of Investigation officials and agents. The list is taken from a list of provisional witnesses that Judge Hastings had submitted last year to a subcommittee of the House Committee on the Judiciary.

The committee knows of no precedent for the pretrial examination of witnesses in connection with a Senate impeachment trial. Nevertheless, the committee will give further consideration to Judge Hastings' request for depositions after receiving from him a statement that includes the following information: a list of proposed deponents; a proffer of the testimony he expects to elicit from each proposed deponent and the relevance of that testimony; whether the proposed deponent has testified or provided statements in prior proceedings and whether Judge Hastings has received or has had access to any transcripts or recorded statements; whether Judge Hastings has asked the proposed deponent to provide information voluntarily and, if he has, the response of the proposed deponent; and, if the committee provides for depositions but limits their number, what priorities Judge Hastings places among the depositions that he is requesting.

If Judge Hastings wishes to pursue his request for depositions, he should submit this statement by April 28, 1989.

It is the committee's hope and expectation that if either the House or Judge Hastings seeks an opportunity to obtain information from the Department of Justice, including the Federal Bureau of Information, that the Department and the Bureau will cooperate voluntarily to provide relevant information.

Stipulations

Fifth, the House, on December 15, 1988, served an original and, on March 31, 1989, served a revised proposed stipulation of facts. The revised proposal reorganizes the original proposed stipulation of facts into fifteen categories. The House also served on December 15, 1988, a proposed stipulation of documents which asked that the parties stipulate that each of the listed documents is genuine. The proposed documentary stipulation also proposed other stipulations for designated categories of documents. The December 15, 1988 submission by the House on documentary stipulations stated the proposed stipulations did not preclude pertinent objections to the admissibility of the documents listed by the House based on matters not addressed in the stipulations.

On January 17, 1989, the House proposed that the Senate adopt a rule that any proposed stipulation of fact will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation should not be taken as true. The House asked for a parallel rule on the authenticity of documents.

An early resolution of factual questions and questions about the authenticity and admissibility of documents that are not in dispute will enable the parties and the committee to focus their time and energies on matters that are truly in disagreement. Also, the committee has been directed by the Senate to report to it on facts that are uncontested.

Accordingly, the committee accepts the House proposals. We direct Judge Hastings to respond to the House's proposed revised stipulations of fact, filed on March 31, 1989, by admitting their truth or serving and filing a specific objection that includes a proffer as to why the proposed stipulation should not be taken as true. With respect to documents, we direct Judge Hastings to respond to the House's proposed documentary stipulations, filed December 15, 1988, by admitting the matters set forth in that submission and by admitting the admissibility of the documents listed by the House, or by serving and filing a specific objection that includes a proffer as to why the proposed stipulation concerning each document should not be taken as true and the particular document admitted into evidence.

Judge Hastings has had nearly four months to evaluate the House's proposed stipulations. We direct that Judge Hastings' response be submitted no later than May 10, 1989. This should be a reciprocal process. Although Judge Hastings' has not proposed stipulations of his own, he may do so by May 10. If Judge Hastings does submit proposed stipulations by that day, the House should respond to them by May 24. The parties should engage in this process with an eye towards resolving problems. Consequently, if a disagreement about a proposed stipulation can be resolved by redrafting the stipulation to be more accurate, or can be resolved by providing access to a specific document, then we would expect the parties to work together to settle differences between them.

Evidentiary Principles

Sixth, the parties have expressed an interest in the evidentiary principles that will govern these proceedings. The committee's task is to receive and report evidence to the Senate. The Senate reserves the power to determine the competency, relevancy, and materiality of the evidence received by the committee. The committee is not bound by the Federal Rules of Evidence, although those rules may provide some guidance to the committee. Members of the Senate sit both as judges of law and fact. Precise rules of evidence are not needed in an impeachment trial to protect jurors, lay triers of fact, from doubtful evidence. In the end, the task of members of the Senate will be to weigh the relevance and quality of the evidence.

Final Pretrial Statements

Lastly, the parties should file final pretrial statements by a date that the committee will designate when it issues an order setting a date for the commencement of testimony. These statements should include a final list of witnesses with a brief statement of the nature of each witness's proposed testimony. The parties should also submit marked exhibits that each proposes to offer. Further, each party should set forth to the committee the legal principles that each believes is applicable to each article of impeachment, or, if appropriately grouped, set of articles. Although the committee will not reach conclusions of law, it is important for the committee, in determining the relevancy of evidence, to know from the parties the legal theories upon which each is proceeding. We will provide more detailed instructions to the parties about the contents of these pretrial statements.

Deferred Matters

The committee is continuing to consider Judge Hastings' application for defense funds. The committee is also continuing to consider a schedule for its evidentiary hearings. The committee expects to issue an order or orders on these matters within a week.

Jeff Bingaman
Chairman

Dated: April 14, 1989

HOUSE MANAGERS' PRELIMINARY WITNESS LIST

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

RESPONSE OF THE HOUSE MANAGERS TO THE AUGUST 10, 1988 LETTER FROM THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

By letter dated August 10, 1988, the Chairman and Ranking Minority Member of the Senate Committee on Rules and Administration requested the views of the parties to the impeachment of Judge Alcee L. Hastings on (a) the authority of the Senate to continue the pending impeachment proceedings to the 101st Congress; (b) the appropriate use in this case of Senate Impeachment Rule XI; and (c) any other matter which may assist the Senate in preparing for a fair trial.

The House Managers respond as follows.

(page 1)

* * *

B.(2) Anticipated Witnesses and Their Testimony

With respect to the number of witnesses the House Managers intend to call, the nature of their testimony, and the amount of time required for the presentation of the case of the House of Representatives, the House Managers must emphasize the tentative nature of this response. The composition of the witness list, the number of witnesses, and the testimony sought to be elicited from a particular witness are all subject to revision as trial approaches and, indeed, even in the course of trial. With this cautionary note in mind, the House Managers estimate that 10 to 12 trial days will be required to present the case on behalf of the House of Representatives. The Managers anticipate that the following witnesses will be called at trial.

---

[7] When Rule XI was enacted it was contemplated that the Senate could have the evidence submitted to the committee "reduced to writing, and laid before the Senators the next morning in the Congressional Record. If the Senator were absent during one day of the trial, he could read the testimony as printed the next morning." 80 Cong. Rec. 3424, 3425 (1933) (remarks of Senator Ashurst).

1. Hemphill Pride. Mr. Pride will testify about the events of October 9, 1981; his lack of knowledge of a letter writing campaign by Judge Hastings on his behalf; and that he did not have access to particular phones identified by Judge Hastings at the judge's criminal trial.

2. William Murphy. Mr. Murphy was the FBI agent in charge of the investigation into the bribery conspiracy. He will testify about the investigation, including the FBI's attempts to interview Judge Hastings on October 9,1981.

3. H. Paul Rico. Mr. Rico is a former FBI agent who acted in an undercover capacity as Frank Romano. He will testify about his contacts with William Borders.

4. John Simmons. Mr. Simmons was the FBI agent who interviewed Judge Hastings in Florida late in the evening on October 9, 1981. He will testify to the details he learned regarding Judge Hastings' actions after the judge returned to Florida from Washington, D.C.

5. Jeffrey Miller. Mr. Miller is a former law clerk to Judge Hastings. He will testify to facts surrounding the drafting and issuance of the forfeiture orders in the case of United States v. Romano.

6. Daniel Simons. Mr. Simons is a former law clerk to Judge Hastings. He will testify about the issuance of the October 6, 1981 forfeiture order in the case of United States v. Romano.

7. Shirley Ross. Ms. Ross was Judge Hastings' date on September 11, 1981 in Washington, D.C. She will testify about the circumstances of Judge Hastings' arrival at her home that evening.

8. Donna Myrill Mendez. Mrs. Mendez was present at the Sheraton Hotel on September 12, 1981, with Judge Hastings and others. She will testify about the events of that evening.

9. Pearl Dabreau Mapp. Mrs. Mapp was present at the Sheraton Hotel on September 12, 1981, with Judge Hastings and others. She will testify about the events of that evening.

10 Madeline Petty. Ms. Petty accompanied William Borders to

the Leonard-Hearns championship fight in Las Vegas, Nevada on September 16, 1981. She will testify about the trip and its planning.

11. Essie Thompson. Ms. Thompson accompanied Judge Hastings to the Fontainebleau Hotel on September 16, 1981. She will testify about that evening.

12. Wendy Loucks. Ms. Loucks was one of the FBI agents that surveilled the Fontainebleau Hotel on September 16, 1981. She will testify about what she observed that evening.

13. Carolyn McIver. Ms. McIver is a social friend of Judge Hastings residing in Columbia, South Carolina. She will testify that Judge Hastings could not have reached Hemphill Pride at her telephone number, contrary to Judge Hastings' testimony at trial.

14. Andrew Chisholm. Mr. Chisholm is a resident of South Carolina. He will testify that William Borders could not have reached Hemphill Pride at Mr. Chisholm's telephone number, contrary to Judge Hastings' testimony at trial.

15. Eleanor Golar-Williams. Ms. Golar-Williams is the former mother-in-law of Patricia Williams, one of Judge Hastings' counsel. She will testify that Judge Hastings could not have reached Hemphill Pride at her telephone number, contrary to Judge Hastings' testimony at trial.

16. Roger Shuy. Professor Shuy, of Georgetown University, is a linguistics expert. He will testify that Judge Hastings and William Borders engaged in a coded conversation on October 5, 1981.

17. Senora Avery (or substitute). Ms. Avery will describe how a Hobic computer records telephone calls made from hotel rooms.

18. Airline Records Specialist. This witness will explain the information contained on airline reservation histories.

19. Stephen Clark. Mr. Clark is Mayor of Dade County, Florida. He will testify that Judge Hastings disclosed to him confidential information, which other witnesses will establish was obtained through a Title III wiretap.

20. Roberto Martinez. Mr. Martinez was the Assistant United States Attorney who applied for authorization for a Title III wiretap from Judge Hastings and presented subsequent progress reports to the judge. He will testify that Judge Hastings expressed a particular interest in the information contained in the reports that Kevin "Waxy" Gordon was talking about Mayor Clark. Mr. Martinez also participated in the decision to terminate certain undercover investigations as a result of the disclosure of confidential information.

21. Christopher Mazzella. Mr. Mazzella was the FBI agent in charge of the public corruption unit in Miami, Florida. He will testify about the undercover investigations for which the wiretap was authorized, the investigation of the wiretap leak and his attempt to interview Judge Hastings.

22. Geoffrey Santini. Mr. Santini was the FBI case agent for the undercover investigations for which the wiretap was authorized. He will testify about presenting Judge Hastings with an application and affidavit to extend the wiretap, at which time the judge commented to the affect that "Waxy" Gordon was going to get Mayor Clark in trouble by talking so much.

23. Monsignor Bryan Walsh. Monsignor Walsh attended the Metropolitan Miami Action Plan meeting during which Judge Hastings disclosed the wiretap information to Mayor Clark. Monsignor Walsh will testify that Mayor Clark and Judge Hastings were together with him prior to Judge Hastings' speech on the morning of September 6, 1981.

The House Managers must emphasize that the foregoing list is not exhaustive. In the course of compiling the list, additional witnesses were considered and not set forth because it is not the House Managers' present intention to call them. This judgment, however, may change depending on how the trial progresses.

In addition, it is not the House Managers' present intention to call any witness who could legitimately invoke any evidentiary or constitutional privilege. This is also only a preliminary

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re	)
	)
	)
IMPEACHMENT OF	)
JUDGE ALCEE L. HASTINGS	)

SUPPLEMENT TO THE HOUSE MANAGERS' PRELIMINARY WITNESS LIST

Pursuant to the April 14, 1989, directive of the Impeachment Trial Committee, the Managers of the House of Representatives hereby revise their preliminary witness list to add the following witnesses, who are expected to testify in the House case in chief as indicated:

1. Cynthia Rogers. Ms. Rogers was the secretary and receptionist at William Borders' law office during the relevant period in 1981. She will testify about record keeping in the office.

2. William Dredge. Mr. Dredge was the informant who alerted the Department of Justice to the Borders - Hastings bribery conspiracy in the *Romano* and Trafficante matters. He will testify as to his knowledge of those schemes and his involvement in the FBI probe of Judge Hastings and William Borders.

3. Forensic experts. These experts from the FBI, Bureau of Alcohol, Tobacco and Firearms, and private sector will testify as to forensic tests performed on the draft letters allegedly created by Judge Hastings on or about October 5, 1981.

4. Robert Richter. In 1981, Judge Richter was one of the prosecutors in the criminal trial of Judge Hastings. He will testify as to the delay in producing the alleged draft "Hemp" letters. In the absence of stipulations, he will also testify as to the sworn testimony of Judge Hastings.

5. Robert Foster. FBI Special Agent Foster will testify as to the use of coded conversations by persons engaging in criminal conduct.

6. Jesse McCrary. Mr. McCrary is a long-time friend of Judge Hastings and Mr. Borders. He will testify as to the events and discussions pertaining to September 12-13, 1981.

7. Barbara Cruel Goodwin. Ms. Goodwin worked at the L'Enfant Plaza Hotel in 1981, and will testify as to her encounters with Judge Hastings at the hotel on October 9, 1981.

Additional witnesses in the absence of stipulations

If the parties are unable to agree to stipulations as to the authenticity of documents, facts relating to those records, and certain other uncontested facts, the House Managers will be required to call the following categories of witnesses:

1. Airline, telephone and hotel witnesses, who will testify as to the facts reflected in their records.

2. FBI special agents who will testify as to surveillance of Judge Hastings and Mr. Borders.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

April 19, 1989

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 Rayburn House Office Building
Washington, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

May 5, 1989

Hon. Jeff Bingaman
Chairman
Impeachment Trial Committee
United States Senate
Hart 524
Washington, D.C. 20510

Re: Impeachment of Judge Alcee L. Hastings

Dear Chairman Bingaman:

It has come to my attention recently that the names of two witnesses were omitted from the lists of probable witnesses previously submitted by the House Managers. Accordingly, I would request that David Thomas and Joel Hirschhorn be added to those whom the House intends to call in its case in chief. Mr. Thomas testified for the defendant in United States v. Hastings. He is expected to testify about the same subject for which he was previously called, to wit, his knowledge of the attendance on September 12, 1981 of William Borders at a family reunion in Ft. Pierce, Florida. Mr. Hirschhorn represented Judge Hastings in the criminal case prior to trial. He will be called to testify regarding discovery proceedings in that case.

In addition, we have selected Special Agent Dale Bird to testify as to surveillance observations on October 9, 1981, and hereby provide specific notice thereof.

Sincerely yours,

John Bryant JC

John Bryant
On behalf of the House Managers

cc: Vice Chairman Arlen Spector
Professor Terence Anderson
Senate Counsel Michael Davidson

JEC:cjl

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

June 9, 1989

RECEIVED JUN 13 1989

Michael Davidson, Esq.
Senate Legal Counsel
642 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Davidson:

We wish to add the names of John Doar and Albert Blocker to the list of those persons who may be called as a witness on behalf of the House in connection with the impeachment trial of Judge Hastings.

Mr. Doar will present testimony summarizing relevant facts pertaining to travel, telephone and court records in evidence. Mr. Blocker will testify as to the telephone billing records of the L'Enfant Plaza Hotel.

Very truly yours,

Alan I. Baron/mp
Alan I. Baron
Special Counsel

AIB:mjp

cc: Terence Anderson, Esq.

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

RESPONDENT'S PRELIMINARY WITNESS LIST

This memorandum sets forth a preliminary list of the witnesses respondent would call at the hearings in this case based upon the information available to him at this time. The list states the nature of the testimony each witness would provide in somewhat greater detail than that provided by the House. The Statement of Facts presented on behalf of respondent in support of his Motion to Dismiss Articles I through XV[1] and the more comprehensive account of the evidence set forth in the Provisional Report submitted in January 1987[2] may aid the committee in understanding the relevance of that testimony to the issues presented in this case.[3] The information available to respondent concerning

---

[1] *See* S. Doc. No. 1, 101st Cong., 1st Sess. at 17-48.

[2] Anderson, *A Provisional and Preliminary Report on the Proceedings Against United States District Judge Alcee L. Hastings: 1981-1986* (1987), *reproduced in* Appendix III to the record of the House subcommittee's inquiry that preceded the impeachment. A copy was produced at this committee's hearing on April 12, 1989, and additional copies will be made available on request.

[3] The statement submitted to the House subcommittee and the Post-Hearing Memorandum submitted to a special committee

William Borders remains unchanged from that last reported.[4] Respondent reserves the right to call him as a witness should this information change. In addition to the persons listed below, each of the persons identified on the House's preliminary witness list would also appear on respondent's preliminary list with the exception of Robert Shuy and the Airlines Record Specialist. Subject to these points and under the conditions specified in the committee's memorandum order (discussed below), the list of persons respondent would call based upon the information available to him at this time is as follows:

1. Gary Aldridge. Mr. Aldridge was an FBI agent who participated in a purported surveillance of Judge Hastings on September 11, 1981, and was a member of the team that conducted interviews and investigations in the judge's chambers on October 9, 1981. He would be called to testify concerning his participation in and observations concerning those events.

2. Steven A. Allen. Mr. Allen was the Assistant United States Attorney in Baltimore who was responsible for prosecuting William Dredge. He dealt with Borders and his local counsel, Alvin Dwight Pettit, in May and June 1981; he participated in the negotiations that led to Dredge's plea agreement on September 10, 1981; and he was involved in

---

concerning the Mayor Clark matter may provide similar aid with respect to the issues raised by Article XVI. *See* App. III at 351-66.

[4] *See A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial That is Fair to Respondent* at 24-25.

events that followed Borders's arrest on October 9, 1981. He would be called to testify concerning matters he observed that are relevant to the issues in the case.

3. Anthony Amaroso. Mr. Amaroso was the supervisory FBI agent in Miami for the 1981 investigation. He was at the Fontainebleau Hotel in September 16, 1981, and at the scene of Borders's arrest on October 9, 1981. Mr. Amaroso was also a friend and a golf partner of Mayor Stephen P. Clark through September 6, 1985. He would have been aware of the undercover investigation that had cast suspicion on the mayor. He would be called to testify concerning his role and matters he observed in both the 1981 and the 1985-86 investigations.

4. Griffin Bell. Mr. Bell was the Attorney General of the United States in the Carter Administration. Borders reportedly was a significant adviser in identifying minority candidates for the federal bench. Mr. Bell would be called to testify concerning Borders's roles and concerning Borders's reputation among high public officials prior to his arrest on October 9, 1981.

5. Albert Paul Benton. Mr. Benton was a drug-dealer involved in the investigation that led to Mr. Dredge's indictment in May 1981. He would be called to provide information that will aid the Senate in assessing Dredge's credibility and motives.

6. Dale E. Bird. Mr. Bird was an FBI agent who participated in the investigation. Agent Bird was at the Twin

Bridges Marriott on October 9 for Borders's arrest and wrote the log in which events that preceded and followed that arrest were recorded. He would be called to testify concerning his role and the events he observed on that date.

7. Richard C. Blake. Mr. Blake was an FBI agent who participated in the surveillance on October 9, 1981, and in the preparation of a surveillance log. He would be called to testify concerning events he observed and recorded.

8. Albert H. Blocher. Mr. Blocher was an auditor at the L'Enfant Plaza Hotel. He testified at the 1983 trial concerning the Hotel's records and billing procedures. He would be called to testify about similar matters here.

9. Richard Bonehill. Mr. Bonehill was Kevin Gordon's attorney. The FBI intercepted a telephone call between Bonehill and Gordon. Gordon disclosed in that call that Mayor Clark had told him that Judge Hastings was the source of the mayor's information that Gordon was "hot." That was the event that precipitated the 1985-86 investigation. Mr. Bonehill would be called to testify concerning the circumstances of that call and the FBI's subsequent approaches to him.

10. Roger Bridges. Mr. Bridges was an attorney who had appeared before Judge Hastings. He testified at the 1983 trial concerning information obtained through *ex parte* contacts with one of the judge's law clerks in 1981. He would be called to testify concerning similar matters in this case.

11. Benjamin Daniel Brown. Mr. Brown was a deputy chairman of the Carter Re-election Campaign Committee and served on the Democratic National Committee. He testified at Borders's trial concerning Borders's role and influence in the Carter campaigns and administration and the uniform belief in his integrity among high government and political officials until his arrest on October 9, 1981. He would be called to provide similar testimony in this case.

12. Guy M. Burns. Mr. Burns is an attorney who had appeared before Judge Hastings. His testimony on ex parte contracts with the judge's law clerks was proffered at the 1983 trial. He would be called to testify to similar matters in this case.

13. William Franklin Burns, Jr. Mr. Burns was the general manager of the Georgetown Inn. He was called before the Investigating Committee to provide information concerning Dredge's stay at the Inn after his arrest in May 1981 and the circumstances under which his room charges were billed to another reputed underworld figure in Washington, Peter Chaconas. The timing and sequence of Dredge's meetings and contacts with Borders has been a subject of dispute as it bears upon the state of Dredge's information and belief when he went to the government to make his deal on July 20, 1981. Mr. Burns would be called to provide information similar to that given the investigating committee.

14. J. Kent Cameron. Mr. Cameron was an FBI agent who participated in the investigation and was sent to interview

Jeffrey Miller on October 9, 1981. He would be called to testify on matters he observed and recorded.

15. John M. Campbell. Mr. Campbell was an attorney in the Public Integrity Section of the Justice Department's Criminal Division. He and Eric Hold were the attorneys assigned to coordinate and review the FBI investigation into the alleged wiretap disclosure. He would be called to testify concerning his role and the decisions that were made during that investigation as they bear upon the credibility of the FBI's investigation.

16. Silvio Cardoso. Mr. Cardoso is a city council member in Hialeah, Florida. Kevin Gordon and Mayor Clark advised the FBI that Cardoso was the person who would take care of the zoning problem in Hialeah. It has since been disclosed that the FBI undercover agent "sold" Cardoso a file purporting to contain information about FBI investigations into zoning corruption in Hialeah. Neither Cardoso nor the information he purchased have ever been produced for examination in the inquiries that preceded this impeachment. Cardoso would be called to testify concerning information he had and may have given Mayor Clark.

17. Peter Chaconas. Mr. Chaconas is a reputed underworld figure in Washington. Chaconas knew Nesline and Dredge. He reportedly told a lawyer whom Dredge had approached to fix Dredge's drug case that Dredge had $100,000 in his briefcase at the time. Chaconas would be called to testify concerning

Dredge, Nesline, and/or Borders and the events that preceded Dredge's decision to approach the government in July 1981.

18. Character Witnesses. This preliminary list contains only a few witnesses whose testimony would be relevant solely to Judge Hastings's character. We are mindful of the committee's concerns and intend to observe their import. With that in mind, respondent would reserve the right to specify additional or other witnesses whose testimony would be germane to the issues raised at trial.

19. James Cobb. Mr. Cobb practiced law with Borders prior to Borders's arrest in 1981. Mr. Cobb had also served as President of the National Bar Association and knew Judge Hastings also. He would be called to testify concerning Borders's practices and eccentricities and other matters in this case.

20. Joanne Tyson Colt. Ms. Colt was a clerk in Judge Hastings's chambers and was present for some of the FBI interrogations that occurred in chambers following Borders's arrest. She would be called to testify to matters she observed.

21. Lucille A. Connelly. Ms. Connelly was an FBI agent in Miami. She participated in and kept the log of the surveillance of Borders at his meeting with Rico/Romano on September 12, 1981. She would be called to testify concerning matters she observed and recorded.

22. Barbara Cruel f/k/a Barbara Jean Goodwin. Ms. Cruel was the front desk receptionist at the L'Enfant Plaza Hotel.

She testified at the 1983 trial. She would be called to testify to her observations on that date and on the accuracy of the hotel's billing procedures.

23. John Crump. Mr. Crump is the Executive Director of the National Bar Association. He was well-acquainted with Judge Hastings and with Borders. He is an appropriate person to produce certain records and testify concerning NBA activities in 1981. He testified at the 1983 trial. He would be called to testify concerning his knowledge of the men and events in 1981 and to produce relevant NBA records.

24. I. J. Cunningham. Mr. Cunningham is a former Vice-President of the National Bar Association who knew Borders. He testified at the 1983 trial concerning Borders's practices and eccentricities. He would be called to provide similar testimony here.

25. Marshall G. Curran, Jr. Mr. Curran was the lawyer who defended the Romanos through trial and until Neal Sonnett took over the case. He was called before the Investigating Committee. He would be called to provide testimony concerning the Romanos and to set their trial in context.

26. Warren Hope Dawson. Mr. Dawson was a president of the NBA who knew Judge Hastings and Borders. He testified concerning Borders and his practices and eccentricities at the 1983 trial. He would be called to provide similar information in this case.

27. Tom Dowd. Mr. Dowd was an FBI agent in Miami. In July 1985, two months before the alleged wiretap disclosure,

agent Dowd received a telephone call from a person identified as Glenn Whittle. Mr. Whittle asked agent Dowd to verify that the FBI was then investigating the activities of two of agent Dowd's friends -- Mayor Stephen Clark and Peter Ferguson. Mr. Dowd would be called to testify about this call and the events that preceded and followed it.

28. William C. Dredge. Mr. Dredge was the drug-dealer who provided information that led to Operation Apple Eye, and he assisted in its implementation. Dredge dealt with Borders and others and knew Borders was operating as a rainmaker. The prosecutors represented that Dredge was not a material witness in 1983, and the trial court denied Judge Hastings's entreaties that he be produced. He would be called and examined thoroughly in this case.

29. Charles T. Duncan. Mr. Duncan is a Washington lawyer who knew Borders well. He testified at Borders's trial expressing his opinion and concerning Borders's reputation prior to October 9, 1981. He would be called to testify to similar matters in this case.

30. Alan G. Ehrlich. Mr. Ehrlich was a clerk in Judge Hastings's chambers. He testified at the 1983 trial concerning matters he had observed and the practices in chambers. He would be called to testify to similar matters in this case.

31. Peter J. Ferguson. Mr. Ferguson was Director of Marketing at Fiscal Operations, a company operating at the Port of Miami. He had also served as Mayor Clark's campaign man-

ager and was apparently involved in matters that were the subject of the undercover investigation of which the 1985 wiretap was a part. Mayor Clark identified Ferguson as the person he called to arrange a meeting with Gordon after he learned that Gordon was "hot." Ferguson's call to Gordon was intercepted by the FBI. Ferguson has never been called to testify concerning these matters. He would be called to testify concerning his role in the events that gave rise to the 1985-86 investigation.

32. Robert B. Foster. Mr. Foster was an FBI agent in Washington in 1981 and participated in the investigation, probably as the case agent. He supervised the wiretap of Borders's telephones. He testified at both trials, and he would be called so that his role may be examined.

33. Ronald R. Foster. Mr. Foster was an FBI agent in Miami. He was one of the agents present at the Fontainebleau Hotel on September 16, 1981. He testified at the 1983 trial. He would be called to testify about those and other events in this case.

34. William E. Gary. Mr. Gary is a lawyer who knew Borders. His testimony on one of Borders's eccentricities was proffered at the 1983 trial. He would be called to provide similar testimony here.

35. Joseph Gibson. Mr. Gibson is a lawyer who had dined with Borders at the Fontainebleau and to whom Borders had spoken about Frank Romano. Mr. Gibson testified at the 1983

trial. He would be called to provide similar information here.

36. Phillip Glatzer. Mr. Glatzer is a Florida attorney who had appeared before Judge Hastings. He testified concerning his contacts with the judge's law clerks at the 1983 trial and would be called to provide comparable information in this case.

37. Lisa Goldstein. Ms. Goldstein had preceded Jeffrey Miller as Judge Hastings's law clerk. She testified at the 1983 trial concerning the problems created when clerks left the judge's chambers without completing matters on which they had worked. She would be called to provide similar information in this case.

38. James Gunn. Mr. Gunn was proffered at the 1983 trial as a witness with knowledge of rainmaking. He would be called to provide similar information in this case.

39. Jimmy C. Harmon. Mr. Harmon was an agent for the Bureau of Alcohol, Tobacco & Firearms. He credited Dredge with supplying him information over the years that had made Harmon's career. Dredge initially approached Harmon with information on Borders's scheme. Harmon rejected the information. Harmon would be called to provide information concerning Dredge and his initial approach in this case.

40. Lawrence Harrigan. Mr. Harrigan was the other agent who interviewed Judge Hastings for more than two hours on the evening of October 9, 1981. He would be called to tes-

tify concerning his recollection of that interview and the events that preceded and followed it.

41. The Honorable Alcee L. Hastings. Judge Hastings testified at his 1983 trial and, without waiving any rights or privileges, we would anticipate calling him to testify at the trial in this case.

42. Mildred Hastings. Mrs. Hastings is Judge Hastings's mother. She testified at the 1983 trial concerning her telephone and other contacts with her son on October 9, 1981, and other matters. She would be called to provide similar information here.

43. Joel Hirschhorn. Mr. Hirschhorn served as Judge Hastings's chief counsel in *United States v. Hastings* until March 1981. Without waiving any rights or privileges at this time, it is our present intention that he would be called to testify concerning events that occurred during and after his participation in this case.

44. The Honorable William M. Hoeveler. Judge Hoeveler has served as a judge of the Southern District of Florida for many years. He was called to testify concerning his knowledge of rainmaking claims by lawyers and others at the 1983 trial. He would be called to provide testimony on this and other matters in this case.

45. Carolyn Howard. Ms. Howard was a friend of Borders and was involved in the NBA. She and Barbara Whiting-Wright were the organizers of the dinner-cruise planned for October 9, 1981. She would be called to testify concerning Borders

and his role in the NBA and concerning the events leading up to the dinner-cruise.

46. Justice Department and FBI Officials. Respondent has included on this list only those subordinate Justice Department attorneys and FBI agents whose participation and roles in the 1981 and the 1985-86 investigation have been revealed in some detail. To his reply in connection with the hearing on pretrial matters last week, respondent appended materials that identified other participants and proffered the relevance of testimony they might provide.[5] If this case were to proceed without discovery, respondent would include them on his list. After discovery, he would anticipate including those whose testimony had been shown to be relevant to the issues in this case.

47. Barbara H. Katzen. Ms. Katzen served as a law clerk in Judge Hastings's chambers. She testified at the 1983 trial about a telephone call she received from him on October 9, 1981. She would be called to testify concerning this call and other relevant matters in this case.

48. The Honorable James Lawrence King. Judge King has served as a judge for the Southern District of Florida throughout Judge Hastings's tenure. He was Chief Judge of the court at the time of the alleged wiretap disclosure in 1985 and at the time details of that investigation leaked to the press in 1986. Chief Judge King would be called to testify concerning his role in the 1985 investigation, his con-

---

[5] *Reply to House Managers' Report and Recommendations on Pending Pre-Trial Matters.*

versations with Judge Hastings when the details of the grand jury investigation appeared in the press in 1986, and his observations of Judge Hastings's performance as a judge since 1979.

49. Peter Kolker. Mr. Kolker was a lawyer to whom Dredge was referred and a partner in the law firm Dredge ultimately retained. Mr. Kolker participated in the September 10, 1981, plea negotiations with Roger Spaeder, Dredge, Steven Allen, Robert Richter, Reid Weingarten, and William Murphy. He would be called to testify concerning the events of that day and the assurances given Dredge that his role would never be disclosed.

50. The Honorable Henry Latimer. Judge Latimer was a state court judge who knew both Judge Hastings and, through the NBA, Borders. He testified at the 1983 trial about his knowledge of both men. He would be called to provide similar testimony in this case.

51. Carolyn Lewis. Ms. Lewis was one of the coordinators of the dinner-cruise planned to honor Borders on October 9, 1981. She testified at the 1983 trial. She would be called to testify concerning her contacts with the judge about the dinner-cruise and other matters.

52. Linguistic Experts. If the House is permitted to introduce Professor Shuy's testimony, respondent would anticipate calling one or two experts in linguistics to counter some of his claims and provide the Senate with a basis for assessing the propriety and limits of such testimony.

53. David Lipman. Mr. Lipman is an attorney who had appeared before Judge Hastings. He testified at the 1983 trial concerning his contacts with the judge's law clerks. He would be called to provide similar testimony in this case.

54. William Lucy. Mr. Lucy served on the District of Columbia Judicial Nominating Committee with Borders. He testified at Borders's trial concerning his observations of Borders and his belief in his integrity until October 9, 1981. He would be called to provide similar information in this case.

55. Robert Mance. Mr. Mance was an attorney who knew Hemphill Pride, II. He testified at the 1983 trial concerning matters that bore upon Pride's credibility. He would be called to provide similar testimony in this case.

56. Don Mason. Mr. Mason was an attorney who was called at the 1983 trial to testify concerning advance information he had received from one of the judge's law clerks. He would be called to provide similar information here.

57. Bonnie Yvette McCrary. Ms. McCrary visited her father at the Sheraton Hotel on September 12, 1981. She would be called to testify that she heard nothing to indicate Borders's presence was expected.

58. Jesse J. McCrary, Jr.. Mr. McCrary knew both Judge Hastings and Borders. At Borders's request, McCrary briefly represented Dredge after his arrest in May 1981. He was with the judge at the Sheraton Hotel on September 12. He

testified at the 1983 trial. He would be called to testify concerning his knowledge of the men and relevant events in this case. Mr. McCrary was also present and a participant at the MMAP Conference on September 6, 1985, and would testify concerning the events that took place there.

59. Debi McMullen. Ms. McMullen was one of the twelve jurors who served at the 1983 trial. The House managers have repeatedly alleged that the verdict at that trial was tainted. Nonetheless, in the exercise of their constitutional role, individual Senators are entitled to accord such weight or deference to that verdict as each thinks proper. Ms. McMullen observed the conduct of the prosecutors and of respondent and his counsel at that trial. She also participated in the deliberations that resulted in the unanimous verdict. She would be called to testify concerning the matters she observed and those in which she participated.[6]

60. Michael J. Meczkowski. Mr. Meczkowski was the probation officer who supervised Mr. Nesline after he had pled guilty to charges of criminal tax evasion in early 1981. He testified before the Investigating Committee and provided information concerning Borders's relationship to Nesline. He would be called to provide similar information here.

61. MMAP Conference Participants. There were 800 persons present at the MMAP Conference where Mayor Clark has alleged that Judge Hastings told him Kevin Gordon was "hot." The

---

[6] Ms. McMullen's views were made available to the Committee on Rules and Administration. *See* S. Rep. No. 1 at 137-42.

FBI interviewed only a few and found none who corroborated the mayor's story. None has been produced to date. Time and resources permitting, counsel will pursue investigations into this area and would, in any event, expect to find a few persons with relevant information. Respondent does not presently anticipate adding more than three witnesses in this category.

62. Phillip Moscatto. Mr. Moscatto was an associate of the Romanos. According to Mr. Moscatto, Dredge approached him as an intermediary to establish contact with the Romanos on behalf of a Washington lawyer who Dredge claimed could help the Romanos with their case. Mr. Moscatto would be called to testify concerning his contacts with Dredge and the Romanos.

63. Joseph Nesline. Mr. Nesline is reputed to be a significant underworld figure in Washington, D.C. He knew Borders and had known Dredge since they had been in the same penitentiary. He apparently introduced Dredge to Borders and was a participant and perhaps the author of Borders's rainmaking schemes. He would be called to testify concerning his knowledge and role in the events of 1981.[7]

64. Rebecca Sutton Nesline. Ms. Nesline was the wife of Joseph Nesline and a participant or observer on various occasions when Nesline, Dredge, and/or Borders were together

---

[7] Mr. Nesline went to jail rather than testify before a 1981 grand jury concerning these matters. He is also presently reported to be suffering from Alzheimers Disease.

in 1981. She would be called to testify concerning these events.

65. John Michael Owens. Mr. Owens was also one of the Justice Department Attorneys who was present when Dredge presented his claims in July 1981. Mr. Owens was familiar with the events that preceded Mr. Dredge's appearance and those that followed and led to the decision to initiate Operation Apple Eye.

66. Margaret Dabreau Owens. Ms. Owens, along with her sister Pearl Dabreau Mapp and Donna Myrill Mendez, were with Judge Hastings and Jesse McCrary at the Sheraton Hotel on September 12, 1981. She would be called to testify concerning the events of that evening and other related matters.

67. The Honorable James C. Paine. Judge Paine was a judge for the Southern District of Florida in 1981. Judge Paine had hired Jeffrey Miller to be his law clerk effective October 1, 1981, upon the completion of Miller's one-year term in Judge Hastings's chambers. Judge Paine later agreed that Judge Hastings could keep Mr. Miller for the month of October so that Miller could complete his work on *Romano* and other unfinished cases. Judge Paine testified at the 1983 trial and would be called to testify to similar matters in this case.

68. The Honorable Peter Palermo. Judge Palermo is a magistrate for the Southern District of Florida. He was called to Judge Hastings's chambers when it was occupied by FBI agents in the judge's absence on October 9, 1981. He would

be called to testify concerning the events he observed and on other matters bearing upon Judge Hastings and his credibility.

69. Herman C. Perry. Mr. Perry had conversations with Hemphill Pride concerning Pride's intense desire to regain his license to practice law while Pride was in prison. The intensity of Pride's desire and the manner in which he communicated it to others have since emerged as facts of some significance. Mr. Perry testified at the 1983 trial and would be called to provide similar testimony here.

70. The Honorable Mathew J. Perry. Judge Perry served as a federal judge in Columbia, South Carolina. He knew Judge Hastings and, through the NBA, Borders. Hemphill Pride had practiced law with Judge Perry before the judge went on the bench. Judge Perry testified at the 1983 trial. He would be called to testify about Pride and his relationships with Judge Hastings and with Borders and other events that occurred in 1981.

71. Alvin Dwight Pettit. Mr. Pettit was an attorney in Baltimore who served as local counsel for Dredge and other clients for whom Borders appeared. Mr. Pettit has knowledge about Borders characteristics and the events that followed Borders's arrest. He testified before the Investigating Committee. He would be called to provide comparable testimony in this case.

72. Mildred Pride. Ms. Pride was Hemphill Pride's first wife. She testified to matters that bore upon his credibil-

ity at the 1983 trial and would be called to provide similar information in this case.

73. Shirley Pride. Ms. Pride was Hemphill Pride's second wife. She and their son were with him at the L'Enfant Plaza on October 9, 1981. She testified at the 1983 trial that Hemphill Pride had *not* accompanied the judge back to his room after informing him of Borders's arrest, but had instead remained in their room for approximately fifteen minutes. She would be called to testify to these and other relevant events.

74. Prosecutorial Standards Expert. The conduct of Justice Department and FBI officials in this case raises questions that bear upon the credibility of the evidence they may provide or that was generated through their efforts. Respondent proffered the testimony of a former prosecutor experienced in the conduct of public corruption investigations and prosecution. Based upon the limited evidence that was available, he expressed opinions concerning decisions that were extraordinary and the credibility of the explanations provided.[8] Based upon the information available before evidentiary hearings begin respondent would anticipate calling the same or a comparably qualified former prosecutor to provide testimony that would aid the Senate is assessing the credibility of the evidence developed by the Justice Department and the FBI.

---

[8] *See* Appendix III at 372-75.

75. Rainmaking Experts. Respondent submitted a proffer concerning rainmaking and its consequences to the House subcommittee. He would anticipate calling one or two persons familiar with the practice at trial. He will specify them when they have been identified and appropriate arrangements have been made.

76. Martin R. Raskin. Mr. Raskin was a Strike Force Attorney and later Chief of the Criminal Division in the United States Attorney's Office in the Southern District of Florida. He had appeared before Judge Hastings as a prosecutor in a complex case involving sensitive information. He later became a defense attorney in private practice and has appeared before Judge Hastings in that capacity. He would be called to testify concerning his observations and opinion of Judge Hastings and concerning the judge's reputation among experienced federal trial practitioners.

77. Herbert O. Reid. Professor Reid had known Borders since he was a student. Professor Reid testified at Borders's trial concerning his own opinion of Borders and Borders's reputation prior to his arrest on October 9, 1981. He would be called to provide similar testimony in this case.

78. The Honorable Robert I. Richter. Judge Richter was a deputy chief of the Public Integrity Section of the Justice Department's Criminal Division in 1981 and continued in that position until his appointment to the bench. Judge Richter was one of the principal prosecutors, and he participated in

the case from the outset of the investigation in 1981 through the trial in 1983 and thereafter. Judge Richter participated in the plea negotiations with Dredge and in the representation to the trial court that Dredge was not a material witness. He also participated in witness preparation and other decisions in connection with that prosecution. He would be called to testify concerning his role in and knowledge of these events.

79. H. Paul Rico. In addition to his participation in the 1981 investigation and the 1983 trial, Mr. Rico has been identified as the source through which Mayor Stephen Clark may have obtained information that he was involved in matters that were under investigation by the FBI. As a result of the information, the FBI received inquiries on the mayor's behalf in July 1985, almost two months before the alleged disclosure in 1985. In the event the matters alleged in Article XVI were heard separately, Mr. Rico would be called to testify concerning his role in these events.

80. Johnny Rivero. Mr. Rivero was an undercover informant in the 1985 investigation that led to the wiretap. He participated in numerous meetings with Mayor Clark and Peter Ferguson as well as Kevin Gordon. He testified concerning some of these matters before a special committee of the Judicial Council of the Eleventh Circuit in Atlanta. He would be called so that he might be more fully examined concerning events that bear upon Mayor Clark's credibility and other matters.

81. Ken Robinson. Mr. Robinson is a criminal defense lawyer in Washington, D.C. In late May 1981, Dredge tried to retain Mr. Robinson to "fix" Dredge's case in Baltimore, a service for which Dredge was willing to pay handsomely. Mr. Robinson refused. At the time Mr. Robinson represented former Congressman Jenrette in one of the Abscam cases. Reid Weingarten was one of the prosecuting attorneys in that case. In the wake of the disclosures that followed Borders's arrest, Mr. Robinson became concerned that Mr. Weingarten had tried to set him up. Mr. Robinson would be called to testify about his dealings with Dredge and related matters.

82. Cynthia Rogers. Ms. Rogers was the secretary receptionist for the law offices where Borders worked in 1981. She largely maintained the telephone logs and observed various persons who visited Borders at the office. She was on duty on October 9, 1981. She testified at both trials. She would be called to testify about her knowledge of relevant records and events.

83. The Honorable Edward Rogers. Judge Edwards was a state court judge. He was a classmate of Hemphill Pride and Judge Hastings in law school and had known them both since. He testified at the 1983 trial concerning the relationship between the two men and matters bearing upon the credibility of each. He would be called to provide similar testimony in this case.

84. Louima Ruth Romano. Mrs. Romano was married to Frank Romano. In the investigations that followed the 1983 trial, the Romanos' activities throughout 1981 were examined. Because both the Romano brothers are dead, Mrs. Romano is one of the only available sources for information. She would be called to testify to events which have been made relevant in this case.

85. Flauren Joyette Royals. Ms. Royals was the MMAP staff member who made arrangements to take the judge from the podium, through the service area, to his car when he completed his speech on September 6, 1985. Ms. Royals testified in Atlanta and before the House that Judge Hastings did not go into the audience or talk to Mayor Clark after his speech on that day. She would be called to testify about these events.

86. Brenda Russell. Ms. Russell owned an apparel shop in Washington and was an acquaintance of Judge Hastings. Judge Hastings visited her store on October 9 and asked her to recommend a luggage store where he might purchase a bag. She did. She testified at the 1983 trial. She would be called to provide similar testimony in this case.

87. Peter Schopperle. Mr. Schopperle was an FBI agent who participated in the surveillance of Judge Hastings at the Fontainebleau on September 16, 1981, and in the surveillance of Borders on September 19, 1981. He would be called to testify concerning events he observed and records he prepared.

88. Simon Stephen Selig, III. Mr. Selig was a deputy assistant to President Carter and a ranking official in the reelection campaign. Borders participated in those activities. Mr. Selig testified at Borders's trial expressing his opinion and concerning Borders's reputation among high public officials prior to October 9, 1981. He would be called to provide similar testimony in this case.

89. Edward R. Shohat. Mr. Shohat is a senior member of the Miami bar who has practiced in the federal court there for more than fifteen years. He has appeared regularly before Judge Hastings and the other judges of that court. He is familiar with the judge's reputation among other experienced practitioners in that court. He would be called to testify concerning those matters.

90. John A. Shorter, Jr.. Mr. Shorter was the attorney who represented Hemphill Pride at his 1977 trial and who represented Borders from October 9, 1981 through his trial and appeal. Mr. Shorter testified before the Investigating Committee concerning his role in the events and the information he received. He would be called to testify about these events and other matters in this case.

91. Deborah Ramona Simmons. Ms. Simmons was one of the FBI agents who participated in the surveillance at the Fontainebleau on September 16, 1981. She subsequently conceded that the memorandum she and her partner prepared concerning that surveillance omitted an item that was crucial

to the judge's defense. She would be called to testify concerning these events.

92. Paul Snead. Mr. Snead knew both Judge Hastings and Pride. He testified at the 1983 trial that in September 1981 Judge Hastings had discussed writing a letter on Pride's behalf. He would be called to provide similar testimony in this case.

93. Roger Spaeder. Mr. Spaeder was one of the attorneys whom Dredge ultimately retained to represent him. Nesline brought Dredge to Spaeder's office in early July 1981. Spaeder participated in the plea negotiations on Dredge's behalf. He would be called to testify concerning statements made by Justice Department representatives at that time and other matters.

94. Norma Stallworth. Ms. Stallworth was called at the 1983 trial to testify about a case in which Borders had allegedly solicited a bribe to fix a case before United States District Judge Barrington Parker and concerning the Justice Department approach to that investigation. She would be called to provide testimony relevant to Judge Hastings's rainmaking defense and other issues in this case.

95. Ralph Stevenson. Mr. Stevenson was a lifelong friend of Hemphill Pride's. He testified at the 1983 trial concerning Pride's desire to gain readmission to the bar and his efforts to that end even while he was still in prison. He would be called to provide similar testimony in this case.

96. Delano Stewart. Mr. Stewart was an attorney who knew Judge Hastings and Borders. He testified at the 1983 trial about Borders's practices and eccentricities and about efforts Judge Hastings had made on Pride's behalf. He would be called to provide similar testimony in this case.

97. Jack Swerling. Jack Swerling was a criminal defense lawyer in Columbia, South Carolina. Mr. Swerling knew Hemphill Pride. Joel Hirschhorn arranged for Mr. Swerling to act in his behalf when Judge Hastings went to Columbia to interview Pride. Swerling would be called to testify to these events, if they became relevant in this case.

98. Telecommunications Expert(s). At trial Judge Hastings testified he had placed long-distance calls from his room at the L'Enfant Plaza Hotel. The hotel records do not reflect these calls. During the 76-minute period when these calls would have been made, the hotel records do not reflect *any* long-distance telephone calls from any of the 372 rooms in the L'Enfant Plaza Hotel. One or more telecommunications experts would be called to address this and other issues raised by the House's apparent intention to submit extensive long-distance billing records.

99. David L. Thomas. Mr. Thomas was a cousin of Borders. Mr. Thomas picked Mr. Borders up at West Palm Beach and drove him to the scheduled family reunion in Ft. Pierce on September 12, 1981. Mr. Thomas would be called to testify concerning his observations and conversations with Borders on that day.

100. Geraldine Grey Thompson. Ms. Thompson was a government official during the Carter Administration. She met Borders at a White House luncheon and they became friends. At Borders's trial, she testified about the opinions she had formed based upon her observations and concerning Borders's reputation among other politically prominent figures. She would be called to provide similar testimony in this case.

101. John W. Wall. Mr. Wall was an agent with the Drug Enforcement Agency in Baltimore. He was the case agent for the investigation that led to Dredge's indictment. He arrested Dredge in Miami on May 10, 1981, and was present at a hearing on June 12, 1981, when Borders appeared on behalf of Dredge. He would be called to testify concerning Dredge and his background and the events he observed.

102. Reid H. Weingarten. Mr. Weingarten was a trial attorney in the Public Integrity Section of the Justice Department's Criminal Division. He was assigned to the case at the outset of the investigation in 1981 and made or participated in the major decisions made in the investigation and prosecution. He would be called to testify concerning those decisions and his role in the case.

103. John Larry White. Mr. White was Hemphill Pride's probation officer following Pride's release from prison in March 1981. By March 1981, Pride was already seeking early release from custody and parole because he thought it would enhance his chances of regaining his license to practice law. Mr. White was also familiar with Pride's financial

condition and movements throughout this period. He would be called to testify concerning these matters.

104. Barbara Whiting-Wright f/k/a Barbara Whiting. Ms. Whiting-Wright was affiliated with the National Bar Association and, with Carolyn Howard, planned and coordinated the arrangements for the dinner cruise honoring Borders on October 9, 1981. She engaged in correspondence and conversations through which Judge Hastings agreed to act as a sponsor for the event and to present Borders with an award. She would be called to testify to these and other events she observed.

105. Glen Whittle. Mr. Whittle called FBI agent Tom Dowd sometime before July 23, 1985. According to Dowd, Whittle said that H. Paul Rico had suggested that Whittle call Dowd. According to Dowd, Whittle asked Dowd to verify that the FBI had an investigation into the activities of Mayor Stephen Clark and Peter Ferguson. This occurred more than six weeks prior to the alleged wiretap disclosure on September 6, 1985. Whittle would be called to testify to these events and the source and extent of his knowledge at that time.

106. Betty Ann Williams. Ms. Williams was Judge Hastings's secretary in 1981. She made his travel arrangements and was generally familiar with his activities and the activities in his chambers during that period. She testified concerning those events at the 1983 trial and before the Investigating Committee. She would be called to testify concerning her observations and records during that period in this case.

107. Charlester Williams. Mr. Williams was a law clerk specially assigned to Judge Hastings's chambers in 1981. He reviewed the draft *Romano* order which Mr. Miller prepared after the July 8 hearing and discussed it extensively with Mr. Miller. He would be called to testify in this case concerning those events and his role.

108. Dudley R. Williams. Mr. Williams practiced law with Borders prior to Borders's arrest in 1981. He testified at the 1983 trial concerning some of Borders's practices and eccentricities. He would be called to testify about those and other matters in this case.

We have compiled this preliminary list in light of the committee's admonition that the burden of showing good cause for additions would be upon respondent. Given the present state of the information and records available to us, prudence dictated a policy favoring inclusion. Nonetheless, we emphasize that, were a trial held under present conditions, the witnesses reflected on this list would be those whose testimony respondent believes in good faith would be necessary to create a record that was likely to be adequate for consideration by the Senate. We offer the following additional notes to aid the committee in reviewing this list and in deliberating upon the issues presently before it.

The committee's memorandum correctly notes that the first request for preliminary witness lists was made on August 10, 1988, and that the House's proposed stipulations have been available, in one form or another, since December

15, 1988. The committee should, however, also be aware that Judge Hastings's views on the need for discovery and the need for funds to enable the defense to proceed were both before the Committee on Rules and Administration by September 19, 1988. In our view these matters cannot be separated in any fair assessment of the proceedings to date or those that would be required to prepare this case for a trial that is fair to respondent.

The committee should also be aware that, under present conditions, the lawyer-time available to aid respondent cannot significantly exceed an average of 200 hours per month. Respondent has been and is represented by two professors, whose compensation is derived from their performance of regular academic duties, and by private practitioners (formerly four, now one) whose income is derived from hours devoted to other matters. In reality the bulk of the time has and must come from the law professor in Miami who has served as principal counsel in all matters other than the 1983 trial for more than seven years with such intense and sporadic contributions as geography and the nature of the work permit his co-counsel to make.

Against that background, the committee should also be aware that the time required to prepare the pleadings, motions, and memoranda required or specifically requested in this case and to participate in the necessary arguments, hearings, and meeting have consumed the available time and rather more.[9] So too, the committee should understand that production of documents in compliance with the schedule prescribed in the committee's order will fully consume more than the time reasonably available under existing conditions through May 10, 1989.

In making the required assessments, the committee should also recognize that the positions taken by the House Managers have fully preserved the scope of the evidence that they may elect to present and thus the issues that respondent must be prepared to confront. The managers correctly note that most of their claims and the evidence that supports them are specified in the fourteen-volume, 3000-page Statement of Information and in the materials concerning Article XVI reproduced in the belatedly published 1189-page Appendix IV to the House subcommittee hearings in the impeachment inquiry. There is nothing in the managers' proposed stipulation of documents that would warrant respondent or his counsel in taking a narrower view of what is required.

We had thought these points self-evident. The committee's memorandum, however, gave us pause. It could be read as reflecting a view that respondent and his counsel have been frittering away their time over the past eight months rather than diligently striving to address issues of first impression and importance and other matters necessary to establish procedures and to prepare for a trial that is fair to respondent. We do not believe that such a view could be reconciled with the record in these proceedings or in the proceedings that have gone before. Nonetheless, we wanted to assure that the committee understood the central position we have urged from the outset: If there is to be a trial that is fair to respondent, the necessary funds and the time to use them to effectively prepare for trial must be provided.

---

[9] The submissions and required arguments, hearings, and meetings are documented in the Senate's files on this case and, for the most part, in the published records of the proceedings to date.

Respectfully submitted,

Terence J Anderson

Patricia Graham Williams
Miami, Florida

Terence J. Anderson
Coral Gables, Florida

Robert S. Catz
Cleveland, Ohio

Counsel for
United States District Judge Alcee L. Hastings

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT

PHONE (202) 224-5471
TELECOPIER (202) 224-5577

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Wednesday, April 19, 1989

With due notice, the committee met in closed session to deliberate upon Judge Hastings' motion for defense funds and to schedule the evidentiary hearings.

The committee agreed to defer action on Judge Hastings' motion for defense funds.

A motion was made, seconded and unanimously agreed to that the evidentiary hearings shall commence on July 10, 1989, and terminate on August 4, 1989.

Isabel T. McVeigh

Isabel T. McVeigh
Journal Clerk

United States Senate
WASHINGTON, DC 20510

IMPEACHMENT TRIAL ISSUES

DISPOSITION OF PRETRIAL ISSUES
SECOND ORDER

In the order of April 14, 1989, the committee reserved judgment on several pretrial issues. After further deliberations on April 19, 1989, the committee determined its schedule for the commencement of evidentiary hearings. This order sets forth that determination, several adjustments in the pretrial schedule established in the April 14, 1989 order that are appropriate in light of that trial schedule, and a schedule for further pretrial conferences with the chairman and the vice chairman. Judge Hastings' motion for defense funds remains under consideration.

Commencement of Evidentiary Hearings

The committee has determined that evidentiary hearings shall begin on July 10, 1989. The articles of impeachment in this matter were exhibited to the Senate on August 9, 1988. The Senate, in Senate Resolution 480 of the 100th Congress, which the Senate agreed to on September 30, 1988, more than six months ago, directed the parties to be prepared by March 1, 1989, or more than seven weeks ago, to present their evidence in the forum to be designated by the Senate. That forum is this committee. The Senate allowed the March 1, 1989 date to pass in order to hear and decide Judge Hastings' motions to dismiss; but we should be reluctant to delay much further the taking of evidence.

In determining the schedule for these impeachment proceeds we must be mindful not only of the interests of the House, the Senate, and Judge Hastings, but also of the interests of litigants in the Southern District of Florida, who require the services of a full district court. We should make steady progress towards the completion of these impeachment proceedings in order to return Judge Hastings to the courtroom if he is acquitted or, if Judge Hastings is convicted, to allow the President to nominate and the Senate to confirm a replacement judge.

Accordingly, we cannot accept Judge Hastings' request for a delay of six months. We believe, however, that the schedule established by the committee will provide the parties with ample preparation time. The date that we have fixed, July 10, 1989, allows the parties more than eleven additional weeks to prepare for this impeachment trial.

Revised Stipulation Schedule

Based on the setting of July 10, 1989 for the commencement of evidentiary hearings, the committee has revised the schedule for stipulations. Judge Hastings shall have until May 17, 1989 to respond to the stipulations of facts and documents proposed by the House. He shall also have until May 17, 1989 to propose his own stipulations to the House. The House shall have until June 7, 1989 to respond to any stipulations proposed by Judge Hastings.

Final Pretrial Statements

The April 14, 1989 order stated that the committee would designate a date for the filing of final pretrial statements when it issues an order setting a date for the commencement of testimony. Final pretrial statements shall be filed no later than June 21, 1989.

Additional Pretrial Conferences

In order to facilitate the preparation for trial, the chairman and vice chairman will meet with the parties on May 17, 1989, and again on June 22, 1989. At the May 17, 1989 conference, the parties should be prepared to discuss ways of reducing the numbers of witnesses to permit the completion of evidentiary hearings within a three-week period. The parties should consider, among other matters, whether the prior sworn testimony of any witnesses may be received in evidence as an alternative to the repetition of their testimony before the committee.

The parties should also be prepared to express their views on whether the evidentiary proceedings should be bifurcated by first receiving the evidence of both sides on Articles I through XV, the bribery and perjury articles (as well as their evidence on any aspects of Article XVII, the summary article, that are germane to those matters), and then receiving the parties' evidence on Article XVI, the wiretap disclosure article. The parties are invited to express their views in writing on these matters, and any other proposals they may have for the conduct of the evidentiary hearings, no later than May 10, 1989.

Arlen Specter

Jeff Bingaman
Chairman

Arlen Specter
Vice Chairman

April 21, 1989

PRETRIAL FILINGS ON DISCOVERY

XV. PRODUCTION OF DOCUMENTS

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

April 21, 1989

Honorable Jeff Bingaman
Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C.

Dear Mr. Chairman:

This is in response to your Disposition of Pretrial Issues ruling dated April 14, 1989.

Regarding FBI documents previously released to the House Judiciary Committee concerning the impeachment matter of Judge Alcee L. Hastings, the FBI has advised the House Judiciary Committee that we impose no objection to the release of any or all of these materials to Judge Hastings.

Regarding any further request for documents which Judge Hastings may direct to the FBI as recommended in your April 14, 1989 ruling, the FBI stands ready to consider any requests for documents made by Judge Hastings provided such is described with particularity. Each requested document would be reviewed to ensure release would not contravene restrictions in disclosure by statute, i.e., material covered by Rule 6(e) of the Federal Rules of Criminal Procedure or Title III, the Omnibus Crime Control and Safe Streets Act of 1968, or privileged material such as:

a. Material that would tend to identify unexposed informants or confidential sources;

b. Material that, if released, could compromise an ongoing investigation;

c. Material that could identify a sensitive investigative technique; or

d. Material that would contravene the privacy of employees interviewed in an administrative inquiry.

It should be noted that these same disclosure provisions were employed in considering the release of FBI documents to the House of Representatives.

Any items requested by Judge Hastings will be reviewed based upon the above standards in an effort to make the fullest disclosure possible to Judge Hastings. Any document which is withheld under (a) through (d) above, will be described to Judge Hastings along with the basis for the denial. In the interest of fairness, should any additional documents be released to Judge Hastings, copies of these will also be provided to the House managers.

It was also noted that your ruling addresses, inter alia, Judge Hastings' request that the Senate utilize its subpoena power to enable him to depose a provisional list of individuals which includes Special Agents of the FBI. The Committee determined that it will give further consideration to Judge Hastings' request for depositions upon receiving from Judge Hastings a statement addressing issues which were specified in the Committee's ruling. The Committee also stated in its ruling that it is its hope and expectation that the FBI will voluntarily cooperate to provide relevant information to the House and Judge Hastings in this proceeding.

It is the intention of the FBI to continue to cooperate in this proceeding. However, it should be noted that most of the information relevant to this proceeding which would be the subject matter of the proposed depositions is prohibited from such disclosure by statute. More specifically, most of the knowledge of the FBI Agents in this matter involves information protected by Rule 6(e), Federal Rules of Criminal Procedure and Title III, Omnibus Crime Control and Safe Streets Act of 1968, Title 18, United States Code, Sections 2510-2521.

A similar issue was addressed previously in this proceeding when the House Judiciary Committee requested the same type of statutorily protected information. These statutory prohibitions preventing the disclosure of such information to the House Judiciary Committee were overcome by a series of court orders which authorized disclosure of such information. The Order of Chief United States District Judge James Lawrence King, Southern District of Florida, dated August 5, 1987 and the two Orders of Senior United States Circuit Judge John D. Butzner, Jr., dated September 21, 1987, and December 1, 1987, specifically addressed this issue.

Accordingly, if any such information protected from disclosure were requested by Judge Hastings directly from Agents of the FBI, those Agents would be prohibited from disclosing such information absent an appropriate court order. Therefore, should Judge Hastings provide sufficient justification to persuade the FBI to provide such information directly to him a valid court order must be issued granting FBI Special Agents authority to disclose such protected information.

Sincerely yours,

William S. Sessions

William S. Sessions
Director

1 - Honorable John Bryant
Committee on the Judiciary
House of Representatives
Washington, D.C.

1 - Mr. Terrence J. Anderson
The University of Miami
School of Law
P.O. Box 248087
Coral Gables, Florida 33124

RESPONDENT'S REQUEST FOR ADDITIONAL DOCUMENTS FROM FBI DIRECTOR SESSIONS

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

May 3, 1989

The Honorable William S. Sessions
Director, Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

Dear Mr. Director:

Pursuant to a ruling issued by the Impeachment Trial Committee dated April 14, 1989, and in light of your response dated April 21, 1989, I write on behalf of respondent United States District Judge Alcee L. Hastings to request the additional documents described in this letter. As you may know, a week ago the House managers delivered to me copies of materials the House had obtained from the Federal Bureau of Investigation during its inquiry. Based upon a preliminary review of the materials submitted concerning "Operation Apple Eye," we request copies of the following documents:

1. Memoranda, minutes, or notes of or concerning a meeting of the Bureau's Criminal Undercover Operations Review Committee held on September 10, 1981, and of or concerning any other meetings of that committee at which Operation Apple Eye was considered or reviewed.

2. Affidavits and applications that were prepared in anticipation that authority would be sought to install "pen registers" or to intercept wire communications from or to Judge Hastings's home or chambers telephone in Ft. Lauderdale and Miami, Florida, and, beginning on October 9, 1981, from or to his hotel room at the L'Enfant Plaza Hotel. Judge Hastings has never been informed that such applications were made. FBI telexes between September 25, and October 8, 1981, represent, however, that such authority would be sought and that the necessary affidavits were being prepared. We are requesting copies of any affidavits that were in fact prepared, regardless of whether they were used. In addition, we would ask that you advise whether any applications were filed and, if so, their disposition so that we

may apply to the appropriate courts for access to additional materials.

3. Any memoranda, minutes, or notes of or concerning two meetings that were held in September 6, 1981, to discuss the status and possible consequences of Operation Apple Eye. We understand the first meeting was held at FBI headquarters at the Organized Crime Section and was attended by Unit Chief James Nelson, Supervisors Sean Hilly and Peter Marcoline, and Special Agents Robert Foster and Dale Bird. We understand that, following this meeting, those present met with Chief Gerald McDowell, Deputy Chief Lee Radek, and trial attorney Reid Weingarten of the Public Integrity Section of the Justice Department's Criminal Division.

4. A 30-page letter dated July 29, 1982, from the Washington Field office to the Director reported to be captioned "DOJ/FBI Investigation of the Unauthorized Disclosure of Information Concerning the Hastings-Borders Case." This letter was redacted in its entirety from the materials initially supplied to the House and finally provided to me last week. Its contents, however, are relevant to two issues in the present case. First, the persons who were responsible for the unauthorized disclosures may be witnesses in this case and the fact that they made or permitted such disclosures would bear upon their credibility and the credibility of any materials they prepared which the House managers may offer in evidence. Second, Article XVI alleges that Judge Hastings improperly disclosed confidential information in 1985 that might have placed an undercover informant in jeopardy. Judge Hastings has alleged that the resulting FBI investigation was neither impartial nor thorough. A comparison between the results of the Bureau's former and subsequent investigations into these improper disclosures will bear upon the credibility that should be given the evidence generated in the letter.

5. Any memoranda, minutes, or notes concerning Operation Apple Eye and the resulting prosecution and trial of Judge Hastings which were not included in files maintained under the designation HQ58-10762. We assume that there were communications among the Director and other senior Bureau officials and between these officials and senior officials in other parts of the Justice Department. The communications we seek would have concerned the decision to authorize an investigation that concerned Judge Hastings, the decision to make him a target of that investigation, the decision to proceed with the investigation after the arrest of William Borders, the decision to seek an indictment, the decision to oppose Judge Hastings's request that the informant be called as a material witness, and any factors that were considered in making any of those decisions. I recognize that many of these materials may be in Justice Department files. Nonetheless, these are decisions in which the Bureau

must have participated or have been consulted, and we cannot believe that the FBI does not maintain files that would document the FBI's role and views on such decisions in an investigation that concerned a United States District Judge.

6. We also request limited information concerning the investigations that were conducted with respect to the 1981 allegations that Borders was involved in similar scams based upon his representations that he had the power to control or fix at least two additional federal judges. In October 1981, the FBI was also conducting an investigation into a claim that Borders had attempted to extract a bribe from Dr. Walter Nickerson and/or Dr. Thomas Marshall Dent in connection with a case pending before United States District Judge Barrington Parker in Washington, D.C.[1] In addition, some time prior to September 2, 1981, Dredge, the reliable informant, had also reported to the FBI that he had "reason to believe that Borders is conducting similar business as alleged in the captioned matter [Operation Apple Eye] with an unnamed federal appellate court judge in New Orleans, Louisiana." With respect to the FBI's investigations into these allegations our specific request is limited. We seek only those documents necessary to enable us to determine (a) the nature, extent, and duration of the investigation that was conducted; (b) whether and at what stage either of the two judges was informed of the allegations and/or the existence of an FBI investigation; (c) the informative notes or memoranda that were submitted to the Director to obtain his approval or disapproval for the investigation, for disclosure to the concerned judge, and for the final disposition; and (d) the notes or memoranda by which the Director expressed his decision.

The information in these documents will be relevant to three issues in this case. First, Judge Hastings has claimed from the outset that Borders was simply a corrupt rainmaker who traded upon his apparent relationships with various federal judges to corroborate his claim that he could fix cases before them in order to exact money for a "bribe." The information sought will tend to confirm that Borders did and had made such claims on a far broader basis than was disclosed at the 1983 trial or in either of the reports that have since been issued. Second, at the urging of the prosecutors, the judge who presided at the 1983 trial ruled that Judge Hastings would not be permitted to introduce his "rainmaking" defense into the case unless and until he could establish that Borders had made similar claims with respect to judges other than Judge Hastings. The trial judge also denied Judge Hastings's request that the government be forced to produce Dredge, the informant, as a material witness upon the prosecutor's representation that he had no material information, a representation made in the presence of the case agent. The information in these files will enable us to establish that the prosecutors (and the case agent) withheld material information from Judge Hastings and misrepresented the facts to the court. That evidence will be clearly relevant to the credibility of all three, each of whom has been designated as a witness on the preliminary witness lists submitted on behalf of the House and of the respondent. Finally, a comparison between the manner in which allegations against these judges were pursued and handled and the manner in which the allegations against Judge Hastings were pursued and handled will be relevant to issues of bias and prejudice that bear upon the credibility of the evidence gathered and presented through government witnesses at the trial of this impeachment.

---

[1] The field investigation was apparently conducted by the Washington field office and were documented in its file bearing the designation WF 62A-11194.

7. We would also appreciate receiving an explanation of the letter-code the Bureau uses in identifying the justification for specific redactions made in the materials it releases. The letters used in the materials received to date do not correspond to subsections in the Freedom of Information Act and my library staff have not been able to locate a description for me. This explanation will assist us in reviewing the materials we have received and your response and in assessing the need for other materials that may have been redacted.

The copies of documents from Bureau files that the House managers delivered last Wednesday represented approximately 17,000 pages. My preliminary inventory indicates that more than 14,000 pages of these materials will have to be examined with some care to determine their relevance to issues in this case. The present request is based upon a preliminary, but rather careful, review of the main files maintained for Operation Apple Eye at the FBI's headquarters and in its Miami and Washington field offices -- about 2500 pages. When I have completed my review of the subsidiary files on this investigation (some 3500 pages), on the wiretap-disclosure investigation (about 1000 pages), and on the FBI's efforts to assist in gathering or generating evidence between 1983 and 1986 (about 6000 pages), we may submit additional requests for specific documents that appear to bear upon the issues in this case.

Judge Hastings and I appreciate your assurance that the Bureau will cooperate. In view of the Impeachment Trial Committee's declared intention to expedite the trial of this impeachment, we would ask for the earliest possible response to this request.

Sincerely,

Terence J. Anderson
Counsel for
United States District Judge Alcee L. Hastings

cc: Senator Jeff Bingaman✓
Senator Arlen Specter
Michael Davidson
Representative John Bryant

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS

Congreſs of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

April 21, 1989

RECEIVED APR 2 5 1989

Professor Terence Anderson
University of Miami
Old Law School - Room 426
1311 Miller Drive
Coral Gables, Florida 33124-8087

Dear Mr. Anderson:

On behalf of the House Managers, I am forwarding to you today, by Federal Express, copies of documents in our files to which you have previously had access. These documents include:

1) Investigating Committee exhibits 1-29, 1103-1653 and 3001-3004, 3006-3010. Because Investigating Committee exhibits 4500 and 4500-A (a used men's purse and a new men's purse) cannot be copied, they are not included.

2) Investigating Committee exhibits 64-66, 70, 131, 2046 and 3031, which are the complete telephone records of those reproduced in our Statement of Information.

3) Consistent with your request, the transcript of the pre-trial proceedings in United States v. Hastings.

4) United States v. Hastings trial exhibits.

My understanding is that at this time you are not requesting a copy of the transcript and exhibits in United States v. Romano. In addition, we believe we now have located copies of the trial exhibits in United States v. Borders, and a set will be forwarded to you as soon as they are received.

Finally, consistent with the April 19, 1989 letter from House Manager John Bryant to Senator Jeff Bingaman, the House Managers will forward to you copies of the remaining documents that fall within the four discovery categories once their release has been authorized by the Committee on the Judiciary or the Subcommittee on Criminal Justice. These documents include sworn statements of persons listed in the preliminary witness lists of the parties, any exhibits thereto, and information that may be deemed exculpatory.

If you have any questions, please call.

Sincerely yours,

Alan I Baron

Alan I. Baron
Special Counsel

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson ✓

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

April 26, 1989

Representative John Bryant
c/o Impeachment Trial Staff
U.S. House of Representatives
Committee on the Judiciary
Room H2-361, House Office Bldg.
Annex #2
Washington, D.C. 20515

Dear Representative Bryant:

I enclose a copy of eighteen of the twenty-eight daily exhibit lists compiled by the Judicial Council of the Eleventh Circuit and transmitted as part of its record. I have marked in the left margin those documents which were omitted ("O") or illegible ("IL") in the set of documents provided to us in April 1986 and which were not included in the list of documents described in Mr. Baron's letter dated April 21, 1989. As these sheets indicate, after allowing for duplicate entries, we still have not received ninety-six (96) items and ninety-one (91) of those which we have received are illegible in whole or in part. I recognize that some of the illegibilities may result from the nature of the documents the House received. Nonetheless, as I am sure you will recognize, many of the omitted and some of the illegible documents are significant to the issues in this case. Accordingly, I would appreciate receiving copies of the omitted items and, to the extent possible, legible copies of those that were marked illegible as early as possible.

I anticipate that I will need portions of the Romano record and may need additional portions of the Hastings and Borders records. I shall advise you after I have had an opportunity to review the documents which were delivered Monday.

Sincerely,

Terence J. Anderson

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson
Alan I. Baron w/encl.

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2137 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

May 3, 1989

Professor Terence Anderson
University of Miami
Old Law School - Room 426
1311 Miller Drive
Coral Gables, Florida 33124-8087

Dear Professor Anderson:

In response to your letter to Representative Bryant dated April 26, 1989, I am enclosing copies of all of the available documents that you describe as being either omitted from our production of Investigating Committee exhibits or illegible.

A review of the daily exhibit lists included with your letter indicates that there are 104 exhibits which you state you have not received. On behalf of the House Managers, I wish to make clear that a year ago you received copies of 72 of those exhibits. Seventy were reprinted in the House of Representatives' Statement of Information. Two others, Nos. 376C and 376D, were provided in the grand jury materials. For your convenience, I have included with this letter a second copy of each of these exhibits. In addition, I have included a list of the 70 exhibits reprinted in the Statement of Information and where they are located. The page numbers on the list correspond to the original 14 volume Statement of Information.

With respect to the remaining 32 Investigating Committee exhibits that you have marked as not having been provided, our records reflect that we provided you with a copy of all but 15 of the exhibits. For your convenience, however, I have included another copy of each of the exhibits already provided. With respect to the 15 you have not received, three of the exhibits, Nos. 1004-1006, are part of the Romano record, which you previously indicated you did not want copied. I have included herewith copies of these three exhibits. Three other exhibits not previously included, Nos. 751A, 753A and 291, are not in the possession of the House and, therefore, cannot be produced. The remaining nine exhibits not previously provided, Nos. 157, 159-162, 167-169 and 428, are tape recordings. Currently, we are attempting to obtain from the FBI duplicate copies of the tapes. We have previously provided to you the transcripts of the tape recordings.

With respect to the Investigating Committee exhibits that you state are illegible, we have recopied all but three of the exhibits. Many of the originals are very light, very dark or fuzzy. We have attempted to obtain the best copy possible. With respect to the three exhibits not recopied, Nos. 2015-2017, better copies cannot be made because the originals are too dark. You have received the best available copy.

Finally, I have included a copy of a FBI 302, dated August 20, 1985, which the House Managers just received. This document was originally in the possession of the Public Integrity Section of the Department of Justice. When the House Managers requested a copy, the document was sent to the FBI to determine whether it could be released. The FBI released the document and we received a copy yesterday.

Please call if you have any questions regarding these matters.

Sincerely yours,

Alan I Baron /LF

Alan I. Baron
Special Counsel

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 Rayburn House Office Building
Washington, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—[illegible]
MINORITY—[illegible]

April 25, 1989

Professor Terence Anderson
University of Miami
Old Law School - Room 426
1311 Miller Drive
Coral Gables, Florida 33124-8087

Dear Mr. Anderson:

On behalf of the House Managers in the impeachment proceedings of Judge Alcee L. Hastings, I am forwarding to you by Federal Express copies of documents that were released today by the House Managers, following the passage of a motion by the House Subcommittee on Criminal Justice authorizing the Managers to take such action. These documents fall into the following three categories:

1) Documents not previously provided that fall within the four discovery categories proposed by the House Managers.

2) Documents received by the House of Representatives from the FBI during its impeachment investigation.

3) An incomplete set of the trial exhibits in United States v. Borders.

With respect to category 1, those documents that are not sworn statements taken by the House impeachment staff, the exhibits thereto, or excerpts from staff interviews, were obtained by the House Managers from the Public Integrity Section of the Department of Justice. Since the Disposition of Pretrial Issues by the Impeachment Trial Committee, the House Managers have taken steps to obtain copies of Department of Justice documents that were previously reviewed by the House impeachment staff and that fall within the four discovery categories. I have included a copy of any Department of Justice document that falls within one of the four discovery categories which we have received to date. If the House Managers receive a copy of any other Department of Justice document falling within the four discovery categories, we will provide you with a copy.

With respect to category 2, the FBI documents have been copied in the order they were received by the House. Because of the sensitive nature of these documents, the House Managers ask you to sign the attached agreement, which addresses their disclosure to the public. After you have signed the agreement, please return it to me as soon as possible. In addition, because the House Managers are providing a complete copy of the FBI documents received by the House in the course of its investigation, we have not identified those documents that you may determine are exculpatory in nature.

Finally, with respect to category 3, we received the incomplete set of the trial exhibits in United States v. Borders from the Public Integrity Section of the Department of Justice only yesterday. My understanding is that the Department does not have a complete set of the trial exhibits Those exhibits which we have received from the Department and which the House Managers are forwarding to you are highlighted in yellow on the list included with the exhibits.

If you have any questions regarding this matter, please contact me.

Sincerely yours,

Alan Baron

Alan Baron
Special Counsel

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson ✓

AGREEMENT

The Subcommittee on Criminal Justice (the "Subcommittee") of the Committee on the Judiciary (the "Committee") of the United States House of Representatives (the "House") has authorized the House Managers in the Impeachment of United States District Judge Alcee Hastings (the "House Managers") to give to Judge Hastings and his counsel copies of certain documents received in Executive Session. The House Managers shall provide to counsel for Judge Hastings the documents described in Schedule A, attached, on the condition that such records be maintained as confidential and not be disclosed to any person except for the purpose of representing Judge Hastings in connection with proceedings in the impeachment trial of Judge Hastings.

In satisfaction of that condition, the undersigned on behalf of himself and Judge Hastings agrees that he will keep confidential and not disclose records obtained pursuant to this Agreement except for the specific and limited purpose of assisting and representing Judge Hastings in proceedings before the United States Senate regarding the impeachment trial. The undersigned also agrees to utilize procedures and precautions to maintain the confidentiality of these records at least comparable to the procedures and precautions he employs to protect the confidentiality of records entrusted to him by his other clients in the normal operation of his offices.

The confidentiality restrictions imposed by this Agreement shall not restrict the undersigned or Judge Hastings with respect to:

(a) the interviewing and preparation of witnesses who may be called at the impeachment trial of Judge Hastings; or

(b) the preparation and filing with the United States Senate of any pleadings in In re the Impeachment of Judge Alcee L. Hastings; or

(c) any records that have been or may be previously disclosed by persons or entities other than the undersigned, Judge Hastings, or their agents as part of the public record in proceedings before the courts or otherwise; or

(d) any records that counsel has obtained or may obtain from sources other than the House Managers, the Committee or the Subcommittee.

The House Managers reserve the right to seek a protective order from the United States Senate if information from these confidential documents is included in pleadings or offered as evidence in trial or pre-trial proceedings in In Re the Impeachment of Judge Alcee L. Hastings.

Agreed by the undersigned on behalf of himself and on behalf of Judge Alcee L. Hastings on the date shown by his name.

Date:____________________ ____________________

Terence J. Anderson

SCHEDULE A

Copies of all FBI documents received by the House of Representatives in the course of its impeachment investigation of Judge Alcee L. Hastings.

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

RECEIVED APR 2 8 1989

April 27, 1989

Professor Terence Anderson
University of Miami
Old Law School - Room 426
1311 Miller Drive
Coral Gables, Florida 33124-8087

Dear Mr. Anderson:

On behalf of the House Managers, I would like to clarify one matter pertaining to the production of documents forwarded to you by Federal Express on April 25, 1989. Included in the production are excerpts from post-interview memoranda prepared by members of the House impeachment staff. I would like to make clear that these excerpts are neither quotes from the witnesses who were interviewed, nor are they verbatim statements of the witnesses. In addition, the post interview memoranda were not shown to the witnesses and, therefore, were not adopted.

If you have any questions regarding this matter, please call.

Sincerely yours,

Alan Baron /LF

Alan I. Baron
Special Counsel

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson ✓

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

April 26, 1989

Representative John Bryant
c/o Impeachment Trial Staff
U.S. House of Representatives
Committee on the Judiciary
Room H2-361, House Office Bldg.
Annex #2
Washington, D.C. 20515

Dear Representative Bryant:

Your Impeachment Trial Staff have advised me that the House managers have some concern over the use that may be made of the materials the Subcommittee on Criminal Justice received in executive session from the Federal Bureau of Investigation. Based upon the statements made at our meeting on April 4, 1989, with Senators Bingaman and Specter, I understand that the FBI redacted such information as it thought necessary to protect the executive interest and has no objection to the release of copies to Judge Hastings and his counsel. Your staff report that the Subcommittee has authorized the managers to release copies of this material to us. They have indicated, however, that the managers believe that these materials contain information that may implicate "privacy interests" of third parties and seek assurance that we will maintain the confidentiality of these records to the extent consistent with the effective assertion of the judge's claims and interests.

I write to assure you that neither Judge Hastings nor his counsel intend to use these materials for any purpose other than establishing the claims and protecting the interests he has asserted in the pending impeachment proceedings and throughout the proceedings that preceded the impeachment. I am happy to agree that counsel will use procedures and precautions to protect the confidentiality of these records comparable to those they employ to protect the confidentiality of records entrusted by other clients. I am also happy to agree that we shall not disclose these records in advance of trial except as such disclosure is necessary for the purpose of investigating or otherwise preparing the case for trial. I also acknowledge that the managers reserve the right to seek a protective order from the Senate if information from these documents is included in pleadings or offered as evidence in the pre-trial or trial proceedings in this impeachment. Respondent, of course, reserves the right to oppose such efforts and to seek any protective orders or other relief as he may believe appropriate.

Based upon my conversations with your staff, I believe those commitments should satisfy the managers' concerns to the extent I understand them. I volunteer these commitments to expedite the proceedings. In so doing, I do not concede that the House managers have any right to impose or insist upon conditions on Judge Hastings's right to obtain or use materials necessary for the full and proper assertion of his rights.

Sincerely,

Terence J. Anderson

TJA:hg

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson
Alan I. Baron

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

RECEI [illegible] 2 1989

May 1, 1989

Professor Terence J. Anderson
University of Miami
Old Law School, Room 426
1311 Miller Drive
Coral Gables, FL. 33124-8087

Dear Mr. Anderson:

In response to your letter of April 26, 1989 to Representative John Bryant, I am writing to confirm that you have agreed in substance to the terms of the agreement proposed by the House Managers concerning the confidentiality of the FBI documents received by the Subcommittee on Criminal Justice in executive session. It is our understanding that the only modification which you have made is that this agreement in no way limits your right to oppose any protective order which the House Managers might seek from the Senate in the future. We have no opposition to that additional term.

Yours truly,

Alan I Baron /pw
Alan I. Baron
Special Counsel

AIB:mp

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson ✓

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

April 26, 1989

The Honorable Jeff Bingaman	The Honorable Arlen Spector
United States Senate	United States Senate
502 Senate Hart Office Bldg.	303 Senate Hart Office Bldg.
Constitution Ave. and	Constitution Ave. and
Second St., N.E.	Second St., N.E.
Washington, D.C. 20510	Washington, D.C. 20510

Dear Senators Bingaman and Spector:

I write to request two adjustments in the early dates specified in the order dated on April 14, 1989, and to report the events that have made this request necessary. First, I request that the date by which respondent may submit particularized requests for documents to the FBI and the Justice Department be extended until Wednesday, May 3, 1989. In addition to the three boxes of materials that I received on Monday, I received this morning four boxes of materials from the House Managers. These boxes contain documents the House had obtained from the FBI and the Justice Department. The managers Impeachment Trial Staff advise that they are seeking copies of additional material from the Justice Department which they had examined and that they expect to forward it shortly. I am requesting this extension so that I may survey these materials before I submit a request to the Justice Department and the FBI. This will enable me to avoid duplication and to make my requests as specific as possible. Second, I am asking that respondent be permitted to supplement his request to take depositions by the same date, Wednesday, May 3, 1989. Pursuant to the committee's order, I will submit a request for depositions on Friday, April 28, 1989. I believe, however, that it may be possible to refine that list after I have reviewed the materials I received today.

I understand the events that precipitated the delays in my receipt of the necessary materials, and I recognize that the House Managers have proceeded as rapidly as possible. Nonetheless, I submit that my requests are appropriate in light of the events that have in fact occurred.

Sincerely,

Terence J. Anderson

cc: Michael Davidson
Representative John Bryant
Alan I. Baron

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

April 26, 1989

The Honorable Paul H. Roney
Chairman
The Judicial Council of the Eleventh Circuit
601 Federal Office Building
St. Petersburg, FL 33701

A Request for Documents in Connection with
The Impeachment of United States District Judge
Alcee L. Hastings

Dear Chief Judge Roney:

By resolutions dated September 25 and October 9, 1987, the Judicial Council of the Eleventh Circuit authorized and instructed John Doar, as counsel to its Investigating Committee, to transmit specified materials to Alan I. Baron, special counsel to the Committee on the Judiciary of the United States House of Representatives. (I enclose copies of those resolutions.) Last December, I submitted a Request for Production on behalf of Judge Hastings asking the House managers to produce these (and other) materials. At a meeting on April 4, 1989, the House Managers disclosed that its staff had "reviewed all the items . . . [but] did not copy all the documents."

On April 14, 1989, the Senate Impeachment Trial Committee, before which the case is now pending, entered an order finding that ". . . the Senate has an interest in the development of a record that fully illuminates the matters that it must consider in rendering a judgement that under the Constitution only the Senate can rule" and that "the special constitutional process that we are now engaged in will be served best by the fullest disclosure possible." (I also enclose a copy of that order.) To that end, the Impeachment Trial Committee instructed Judge Hastings to submit particularized requests to the House, the Justice Department, and the Council by April 26, 1989, for the materials he thought necessary to prepare for trial. As counsel to Judge Hastings, I am submitting this request pursuant to that instruction.

This request is, in essence, grounded in fairness. Without regard to the propriety of the initial decisions, the Council did make the materials available to the House, and the House Managers and their Impeachment Trial Staff have had such advantages as these materials might provide in aiding in their preparation for the trial of this impeachment. Simple fairness, absent substantial and specific interests to the contrary, should dictate that comparable access now be afforded to respondent and his counsel. I submit the requirements of fairness in this case are enhanced by the fact that Judge Hastings does not yet have and has never had available financial resources sufficient to enable him and his counsel to conduct analyses and investigations comparable to those accomplished through the application of resources provided by the judiciary and the House.

In compliance with the Impeachment Trial Committee's request, however, respondent has limited this request, insofar as our present information permits, to those specific materials that do or appear likely to contain "records that are germane to the issues in these [impeachment] proceedings" or that might materially expedite trial preparation. On the Exhibits 1 and 2 to the Council's resolutions, I have circled the entries for the specific materials Judge Hastings seeks by this request. In order to assist the Council, the House, and the Impeachment Trial Committee in reviewing this request and any responses thereto, I set forth below the reasons why Judge Hastings seeks the materials marked, using the categories employed in the Council's exhibits. Although I have attempted to be as specific as possible, the Council should be aware that neither Judge Hastings nor I have seen these materials.

Exhibit I (appended to resolution dated September 25, 1985)

1. FBI materials. The Senate has ruled that Judge Hastings should be permitted to develop and present evidence concerning any motives or biases that may bear upon the credibility of testimony and evidence developed by the FBI which will be offered by the House at the trial of this impeachment. I have today received from the House Managers a copy of materials the House received from the FBI. Although I will not be able to determine our specific needs, in order to assure that the issue may be developed fully, we would ask that the Council authorize respondent's counsel to examine materials in this category to assure that the records produced by the FBI and made available to us are complete and include all records that may bear upon any motivations or biases that may have influenced the FBI in the conduct of this investigation.

Respondent's specific need for the three-volume set of materials styled "Contacts with FBI" (item 1.a.) is contingent upon the contents. To the extent that those volumes represent analyses of contacts between the FBI and others in the 1981 investigation compiled by Mr. Doar and his paralegals, we seek them as an aid to trial preparation. I simply do not have a staff of paid (or unpaid) paralegals to whom I can assign tasks such as these and the time available for me to develop such analyses is limited. Thus, even if this is merely work-product, it has been made available to counsel for the House Managers and I think fairness dictates it now be made available to counsel for respondent.

To the extent these volumes document contacts through which the FBI aided the Investigating Committee, the materials are likely to be germane because they will enable me to determine what witnesses were interviewed or reinterviewed by the FBI during the period 1983 to 1986. This information should be available for examination or cross-examination at trial so that the Senate may be aware of the number of times and circumstances under which witnesses have previously been asked or required to recount matters to which they may testify to before the Impeachment Trial Committee as it bears upon the credibility of the testimony they present. (Again, respondent's need for materials of this type may be reduced or eliminated based upon the materials produced by the House Managers.)

2. Witness files. I have marked only those files that identify (a) persons who appear in the preliminary witness lists submitted by the House Managers or by counsel for respondent, (b) organizations whose records the House has indicated it may offer at trial, or (c) persons who would have been called but for the fact that they are dead. We wish to examine these files to determine whether they contain materials that will aid us in examining or cross-examining witnesses; to determine whether and subject to what limitations we might safely stipulate to the authenticity and accuracy of certain business records; and to determine whether these are materials or sources through which we might develop evidence comparable to that which persons who are now dead might otherwise have provided.

3. Notebooks. We seek copies of the notebooks primarily to expedite and facilitate our trial preparation. Although I have devoted considerable time to analyzing the materials made available to me, I reiterate that I do not have and have not had the time and staff that was available to aid Mr. Doar in this work. Moreover, we only received on Monday, April 24, 1989, a complete set of the telephone records, and the conditions under which those records were available to me before that date were not such that I could undertake the necessary analysis.

We particularly seek the notebooks that analyze and document the events and contacts that occurred from January 1981 through February 1983. The House, as did the Investigating Committee, has alleged that the activities of Judge Hastings and Mr. Borders and the communications indicated by the available telephone records establish a pattern of contacts that can be correlated with the events that occurred in the Romano case, a pattern that is consistent with guilt. As you know, I have elsewhere developed an analysis, based upon the limited access I was afforded by the Judicial Conference, that demonstrated that the pattern of contacts for 1981 was also consistent with other events that occurred that year which would have justified or required contacts between the two men, a pattern that is fully consistent with Judge Hastings's repeated claims of innocence. The House Judiciary Committee conceded the existence of such a pattern, but found it less persuasive. I seek access to these notebooks in order that the record produced in the trial of this impeachment may fully illuminate this issue.

Specifically, we seek the notebooks that document the chronology of events in United States v. Thomas and Frank Romano (category b); the "Day-to-Day Analysis of Activity Beginning Friday, January 2, 1981, and Concluding Tuesday, October 13, 1981" (category d); the Telephone Number Analysis (category e); and the Eleventh Circuit Paragraph Chronology (category a). In terms of expediting trial preparation, the Day-to-Day Analysis and all the Telephone Number Analyses are the most critical of these materials.

The notebooks containing digests of the records in United States v. Hastings and of the Investigating Committee transcripts would be helpful and would facilitate trial preparation. Because I have of necessity had to develop comparable digests for the bulk of these materials, I request production of these notebooks solely in the interest of fairness and reciprocity. I do not seek Mr. Doar's compilation of Impeachment Material.

Exhibit 2 with additions (appended to resolution dated October 9, 1987)

1. File Drawer 1. Hemphill Pride, II, has been identified as a critical witness at every stage of the proceedings against Judge Hastings. With resources and time to use them, I would have and could now travel to Columbia, South Carolina, to examine and copy the records of the criminal and civil actions brought against Mr. Pride in federal court. I have not had and do not have those resources. Since these public records were obtained by the Council, I would ask that they now be made available for respondent's use.

2. File Drawer 2. The House has or soon will produce copies of relevant material from this category. Respondent does not assert that the remainder of the materials are ger-

mane to the present proceedings in view of the Impeachment Trial Committee's rulings.

3. File Drawer 3. Some material in this drawer is clearly germane to the issues. I cannot, however, determine how much of it was transmitted to the House. I have received the Delano Stewart materials and the materials on Hemphill Pride's disciplinary proceedings that were received as exhibits by the Investigating Committee. I seek access to these materials only to the extent they include items that were not made part of the record of the Investigating Committee proceedings.

The Investigating Committee and the House Judiciary Committee viewed the sequence and timing of Judge Hastings's production of discovery material as germane to the accusations made in Articles I, VIII, and IX of the Articles of Impeachment. The FBI's handling of this material is relevant to issues that bear upon the presence or absence of motives or biases that influenced the FBI and Justice Department in the prosecution of this case. For that reason, I seek these materials in their inventoried and uninventoried form. The other materials in this drawer do not appear germane to the issues in this case as delineated by the Impeachment Trial Committee.

4. File Drawer 4. The Investigating Committee Digests would facilitate trial preparation. I seek them in the interest of fairness and because they have been made available to counsel for the House.

5. File Drawer 13. The logs and correlations of telephone contacts among the central figures in this case are crucial to fair trial preparation. Given the mass of telephone records the House managers have identified as potentially relevant to their case and the extent to which the Impeachment Trial Committee seeks to expedite the trial of this case, I simply will not have time to replicate the analyses apparently documented in these materials. The request is grounded in fairness. They were compiled through the expenditure of public funds; they have been made available to counsel for the House; and they contain analyses relevant to respondent's case that are not fully reflected in the reports of either the Investigating Committee's or the House Judiciary Committee's reports -- e.g., analyses of contacts Dredge and Nesline and Borders and Nesline.

This file drawer also apparently contains material concerning the case of United States v. Dredge that is crucial to a fair defense. The local prosecutor, Steven Allen, testified that both he and Judge Frank Kaufman viewed the materials in Allen's file as significant. We understand that Judge Kaufman viewed the information he received in those proceedings as so significant that he concluded that he must recuse himself from participating in the Judicial Conference's decision to certify the Investigating Committee report and record to the House in March 1987. These materials should, in respondent's view, have been made part of that record. They should now be made available to respondent for use in preparing for and at trial.

The materials relating to Borders's arrest have been viewed as crucial throughout. The FBI has given conflicting accounts of why he was arrested at the scene when no money could be traced to Judge Hastings and when the FBI's then evidence of Judge Hastings's involvement was marginal. Any materials that bear upon those decisions are crucial.

The materials from Borders v. Reagan (D.C.) and U.S. v. Santiago Cortez (S.C.) are public records. We request their production by the Council simply to eliminate the time and expense that would be required for us to travel to two districts to examine them at the courthouses where they are maintained.

6. File Drawer 18. We understand that the probation files for Frank and Thomas Romano were transmitted to the House as part of the record. We have requested these materials from the House Managers. Unless this drawer contains materials concerning the Romanos that were not transmitted to the House, we do not seek access to materials in this drawer.

7. Miscellaneous. The "Drug Enforcement Agency File -- Re: William Dredge" is crucial. Mr. Dredge was viewed as a significant witness by the Investigating Committee and appears on the preliminary witness lists submitted by both the House and the respondent. We recognize that these materials may cover sensitive matters; nonetheless, their production now is necessary to afford Judge Hastings a right to confront his original accuser properly.

The "Telephone Records of Judge Hastings Chambers obtained from administrative office of United States Courts" would be necessary only to the extent they were not included in the record transmitted to the House. I would emphasize that complete production of these records and of the two "Confidential Memoranda re: Telephone System in Judge Hastings' Miami Chambers" and "re: Judge Hastings' Fort Lauderdale Chambers Telephone Records for 1981-82" [Exhibit 1, items 3.e (14) and (15)] is important. The House Managers have proposed stipulations concerning these records. The Investigating Committee received these records, but did not take adequate testimony concerning the system under which they are recorded. It is my understanding that the "FTS" system did not record all calls during this period. Thus, we will need this information before respondent could consider stipulations regarding these records. We do not believe that the remaining materials in this category are germane to the issues in this case as delineated by the Impeachment Trial Committee.

Finally, a portion of the transcript of testimony concerning William Dredge was "omitted from this transcript [prepared as a record of the Investigating Committee's hearings] and is filed separately under seal. See Transcript of Proceedings Before the Investigating Committee, volume IV at 59-60. The information in the sealed portion of that transcript must bear upon any fair assessment of Dredge's credibility. More importantly, information concerning Dredge's links within the underworld are essential to enable me to develop properly the Nesline-Dredge-Borders theory developed in the Provisional Report I prepared in January 1987. I recognize that the information in this transcript is likely to be sensitive. Nonetheless, it is essential and is part of the record upon which the Investigating Committee relied. I request that a copy be sent to me and, if this has not already been done, to the House Managers.

The Council should be aware that the Impeachment Trial Committee is seeking to expedite these proceedings. Under the revised schedule established by a second order issued April 21, 1989, the committee has given Judge Hastings until May 17, 1981, to respond to the House's proposed stipulations and to submit any stipulations he proposes. The committee has established this schedule with a view that stipulation negotiations will be complete and final pretrial statements will be filed by June 21, 1989, so that evidentiary hearings may begin on July 10, 1989. As you will note, the initial order provides: "With knowledge of the committee's interest in the fullest disclosure possible, we would appreciate knowing of the Department's and the Council's responses at the earliest possible time." I would ask that the Council consider this request with the deadlines established by the Impeachment Trial Committee's orders in mind.

Sincerely,

Terence J. Anderson
Counsel for
United States District Judge Alcee L. Hastings

cc: Senator Jeff Bingaman
Senator Arlen Spector
Michael Davidson ✓
Representative John Bryant
Miguel Cortez
John Doar

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

RESPONSE OF THE HOUSE MANAGERS TO RESPONDENT'S SPECIFIC REQUEST FOR DOCUMENTS FROM CHIEF JUDGE RONEY

Pursuant to the April 14, 1989 directive of the Senate Impeachment Committee, the House Managers hereby set forth their position on the production of documents sought by Respondent. It is our understanding that this response is to be limited to "particularized" requests made by Judge Hastings pursuant to section (d) of the April 14 Committee rulings addressing documentary discovery. Respondent has made no "particularized" request directly to the House of Representatives. However he has sent the House Managers a copy of his April 26, 1989 request for documents addressed to Chief Judge Roney of the Judicial Council of the Eleventh Circuit. Accordingly, we address herein only those items identified in the April 26, 1989 request for documents submitted by Respondent to Chief Judge Roney.

Beyond the institutional concerns presented in earlier pleadings, the House Managers have no specific objections to the production of copies of the documents described in the April 26, 1989 request which the House received from the Judicial Council of the Eleventh Circuit. Our position is conditioned upon the requirement that Respondent agree to the confidentiality provisions to which he previously agreed with respect to the FBI documents produced for Respondent by the House Managers on April 25, 1989. The House of Representatives has a responsibility to protect the privacy interests of third persons unrelated to this proceeding. For this reason, the House Managers ask Respondent to agree to the confidentiality provisions.

As previously indicated, the House does not have in its possession all the documents listed in the exhibits to the Eleventh Circuit resolutions. The House Managers, therefore, attach hereto a copy of those exhibits with checks indicating the files or portions of files which the House has in its possession.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /PW
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

May 3, 1989

DOAR DEVORKIN & RIECK
LAW OFFICES
WOOLWORTH BUILDING
(212) 619-3730

JOHN DOAR
MICHAEL S. DEVORKIN
JOHN JACOB RIECK, JR.

10TH FLOOR
233 BROADWAY
NEW YORK, N.Y. 10279
TELECOPIER: (212) 962-5037

May 12, 1989

Mr. Terence J. Anderson
c/o The University of Miami
School of Law
Coral Gables, Florida 33124-8087

Re: Documents Requested in Connection With The Impeachment of United States District Judge Alcee L. Hastings

Dear Mr. Anderson:

The Judicial Council of the Eleventh Circuit has directed me to reply to your letter of April 26, 1989, to Chief Judge Roney.

The Council has authorized me to make available to you for your inspection (and, if necessary and appropriate, copying) all of the materials you have designated with the following exceptions:

(1) You ask to examine the files maintained by counsel for the Investigating Committee with respect to certain persons who may have possessed information pertinent to the Council Investigating Committee's investigation of Judge Hastings. Some of these witness files contain nothing. Some only contain a copy of a witness subpoena. Other files contain work product of the Investigating Committee, its counsel and his staff, such as (a) statements of the witness, (b) summaries of interviews with the witness, (c) documents relating to the witness, (d) communications from members of the Investigating Committee, and (e) notes and memoranda reflecting the mental processes of members of the Investigating Committee, the Committee's counsel, and his staff. You may examine everything in these files except items (d) and (e). I will describe the withheld materials for you when you examine the files.

(2) You ask to examine the notebook labeled "Day-to Day Analysis of Activity Beginning Friday, January 2, 1981, and Concluding Tuesday, October 13, 1981." This notebook was prepared and maintained by one of the members of the Investigating Committee to record information as it became known to the Committee, and it includes many references to such member's observations and mental processes during the course of the Committee's investigation. The Council believes it would be inappropriate to make the notebook available to you.

(3) You ask to examine the three-volume set of materials styled "Contacts with FBI" and "Oversized Documents from FBI." These volumes contain work product of the Investigating Committee, its counsel and his staff, such as communications from members of the Committee to counsel, from counsel to the FBI, and from the FBI to counsel. These communications reflect the mental processes of members of the Investigating Committee, the Committee's counsel and his staff during the course of the Committee's investigation of Judge Hastings. The Council has instructed me not to disclose such work product to you.

The three-volume set of materials also contains several "302's," i.e., summaries of FBI interviews and investigative contacts, which the FBI provided the Investigating Committee and its counsel. You may examine the 302's for any of the persons referred to on page 3 of your letter under the heading "2. Witness Files."

Finally, the "Original documents from FBI file" will be available for your inspection.

(4) You ask to examine the "Telephone Number Analysis consisting of 15 items. Except for item 15, these documents will be produced. Item 15 contains mental processes of one of the members of the Investigating Committee.

(5) You ask to examine the "Drug Enforcement Agency File--Re: William Dredge." This file contains work product, in the form of the notes of the Investigating Committee's counsel, and some highly sensitive material involving the Drug Enforcement Administration and its internal operations. This file will not be made available.

(6) You ask to examine the portion of the transcript of the testimony of William Dredge that was specially sealed by the Investigating Committee. This sealed material is presently in the possession of the House of Representatives. It was transmitted by the Investigating Committee, as part of the record of its proceedings, to the Council, by the Council to the Judicial Conference of the United States, and by the Judicial Conference to the House of Representatives without being

unsealed. The Council did not retain a copy of this sealed material, and therefore cannot comply with your request.

For your convenience, I am forwarding to you under the cover of this letter the "Telephone Number Analysis," and, as soon as I have copied them, I will send you the "Eleventh Circuit Paragraph Chronology" with supporting materials (five volumes).

Please let me know when you would like to examine the materials to be disclosed in accordance with this letter. If there is any other material that you know you will want copied, please call me.

Sincerely,

John Doar

John Doar

cc: Chief Judge Paul H. Roney
Senator Jeff Bingaman
Senator Arlen Specter
Representative John Bryant

DOAR DEVORKIN & RIECK
LAW OFFICES
WOOLWORTH BUILDING
(212) 619-3730

JOHN DOAR
MICHAEL S. DEVORKIN
JOHN JACOB RIECK, JR.

10TH FLOOR
233 BROADWAY
NEW YORK, N.Y. 10279
TELECOPIER: (212) 962-5037

89 [illegible] 9:51

June 26, 1989

Senator Jeff Bingaman
Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Re: Documents Requested in Connection with The Impeachment of United States District Judge Alcee L. Hastings

Dear Senator Bingaman:

I enclose the letter I have written to Terence J. Anderson with respect to the documents he selected for copying after his review of the materials made available to him by the Judicial Council of the Court of Appeals of the Eleventh Circuit.

Respectfully,

John Doar

John Doar

cc: Chief Judge Paul H. Roney
Senator Arlen Spector
Representative John Bryant
Alan I. Baron
Terence J. Anderson

DOAR DEVORKIN & RIECK
LAW OFFICES
WOOLWORTH BUILDING
(212) 619-3730

JOHN DOAR
MICHAEL S. DEVORKIN
JOHN JACOB RIECK, JR

10TH FLOOR
233 BROADWAY
NEW YORK, N.Y. 10279
TELECOPIER: (212) 962-5037

June 26, 1989

By Federal Express

Terence J. Anderson, Esq.
University of Miami
School of Law
P.O. Box 248087
Coral Gables, Florida 33124

Re: Documents Requested in Connection with The Impeachment of United States District Judge Alcee L. Hastings

Dear Mr. Anderson:

In accordance with our conversation last Friday in my office, I enclose herewith the documents that you selected for copying following your review of the materials that the Judicial Council of the Court of Appeals for the Eleventh Circuit made available to you for inspection.

I believe the documents are complete. However, if any document was inadvertently overlooked in copying, please let me know and I will furnish it to you promptly.

Sincerely,

John Doar

Enclosures

cc: Chief Judge Paul H. Roney (w/o enclosures)
Senator Jeff Bingaman (w/o enclosures)
Senator Arlen Spector (w/o enclosures)
Representative John Bryant (w/o enclosures)
Alan I. Baron (w/enclosures)

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

May 3, 1989

The Honorable Richard L. Thornburgh
Attorney General of the United States
United States Department of Justice
10th St. & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

I represent the Honorable Alcee L. Hastings, a United States District Judge for the Southern District of Florida. Judge Hastings is the respondent in a case of impeachment now pending in the United States Senate. The proceedings are presently pending before an Impeachment Trial Committee.

Prior to the appointment of the Impeachment Trial Committee, we had requested that the House managers produce documents that the House had obtained directly or indirectly from the Justice Department concerning the two investigations and the prosecution and trial that generated the allegations made in the Articles of Impeachment. The Impeachment Trial Committee asked the House to produce copies of such portions of those documents as its managers thought relevant to the issues in the case and instructed respondent to submit a particularized request to the Department of Justice for such additional documents as he thought necessary. (I attach a copy of the Impeachment Trial Committee's ruling for your convenience.) Although the House managers advise that they have not completed their intended production of documents in this category, I am submitting this initial request in order that we may adhere as closely as possible to the schedule established by the Impeachment Trial Committee.

The articles all stem from two matters that were initially investigated by the Justice Department. The first was the investigation and prosecution of Judge

Hastings on allegations that he was a co-conspirator in William A. Borders's corrupt 1981 scheme to extract a bribe from the Romano brothers. That investigation and prosecution culminated with the judge's trial and acquittal in 1983. The second was the investigation into allegations that it was Judge Hastings who had improperly disclosed information that he learned in his capacity as the judge who authorized the interception of wire communications. That investigation resulted in the Department's decision to file a complaint with the Judicial Council of the Eleventh Circuit.

The House managers have reported that they (or their staff) "have . . . reviewed, but at this time do not have copies of, Department of Justice investigative and trial files pertaining to the bribery conspiracy case and the investigation of confidential wiretap information." The Council has reported that the chief counsel to its original Investigating Committee received materials from the United States Attorney for the District of Maryland concerning the case of United States v. Dredge. In our view, fairness requires that the same materials now be made available to respondent.

The House managers have made it clear, in any event, that they intend to present and rely upon evidence gathered by the Justice Department and the FBI in support of the House's allegations, and more than twelve of the thirty-six witnesses identified on the Houses's preliminary witness lists are present or former Justice Department attorneys, FBI agents, or other executive branch employees. The Impeachment Trial Committee has ruled that Judge Hastings should be permitted to present evidence in support of his claim that the officials who gathered and recorded this evidence and those who testified had improper motivations and biases to the extent that such evidence may bear upon the credibility of the evidence so gathered and presented by the House managers. Although we recognize that the Department is unlikely to accept the underlying claims, I have limited the materials sought in this request to those that are likely to contain information relevant to the issues defined by the Impeachment Trial Committee and other issues framed by the pleadings.

In the absence of an index or other specification of these materials, it is difficult for us to frame a highly particularized request at this time without undue risk that we will be underinclusive or overinclusive. Nonetheless, in response to the Impeachment Trial Committee's instruction, we request the following documents:

The Conspiracy Investigation, Prosecution, and Trial.

1. There was testimony before the Eleventh Circuit Investigating Committee that the Associate Attorney Rudolph Guliani was consulted about whether a deal should be pursued with William Dredge, the informant, to induce his cooperation for an investigation into his claims with respect to William Borders and Judge Hastings. According to this testimony, the information was provided and initial consultations occurred in late July 1981, shortly after the informant approached the offices of the United States Attorney and of the Organized Crime Strike Force in Miami. We request copies of the letters, memoranda, or telexes by which the initial information was transmitted to the Department; memoranda by which it was processed and subsequently presented to those in the Justice Department chain-of-command; and memoranda, minutes, or notes evidencing the discussions concerning the matter and the decision to authorize its pursuit.

2. The Department determined that the cooperation of William Dredge, the informant, was necessary. The records we have received indicate that Dredge was a career criminal with a record that extended back to 1943. At the time he came forward with information concerning Borders and his claims, Dredge was under indictment in a significant drug distribution case in the District of Maryland. The Assistant United States Attorney responsible for that prosecution, Steven Allen, was reluctant to give Dredge a plea bargain on the terms that he initially requested and that were urged by the FBI. Discussions of a possible plea bargain began in late July 1981 and culminated in the intense negotiation that produced the final plea agreement on September 10, 1981. Both the judge who presided over Dredge's case, Judge Frank Kaufman, and the prosecuting attorney, Mr. Allen, viewed the negotiations that led to that plea agreement as likely to be significant in the future.[1]

Against this background, we request copies of:

(a) any memoranda concerning the need for a plea agreement and the terms that should be required that were prepared by the prosecuting attorneys and any recommendations or requests for assistance that were submitted to officials above them in the Department's chain-of-command and any notes or memoranda concerning the disposition of such requests or recommendations;

---

[1] As you may be aware, Judge Kaufman recused himself from any participation in the Judicial Conference's decision to certify Judge Hastings to the House, reportedly on the basis of information he had acquired through his role in the Dredge case.

(b) any letters, memoranda, notes, or instructions contained in communications between officials in the Justice Department and officials in the Offices of the United States Attorney for the District of Maryland and for the Southern District of Florida concerning the plea negotiations and their proper disposition; and

(c) materials in the file on Dredge's case maintained by Steven Allen, the Baltimore assistant responsible for the case, insofar as they relate to requests that he enter into plea negotiations, the negotiations and agreement that resulted, or the events that occurred following the public disclosure of the informant's identity.[2]

3. Immediately after Borders's arrest on Friday, October 9, 1981, there were significant "leaks" of information known at that time only to FBI and other Justice Department officials who had participated in the investigation. For example, by the following Sunday, the Washington Post identified William Dredge as the government's informant. Over a short period of time, details concerning evidence that allegedly linked Judge Hastings to Borders's scheme appeared in newspapers in Washington, Miami, and elsewhere.

These disclosures precipitated concern and complaints in two quarters. We understand that Judge Kaufman and prosecutor Allen expressed concern and considerable outrage that the government had breached its obligations to Dredge and had placed his life in danger. Judge Hastings and others expressed concern that the disclosures were designed to drive him from the bench or, at a minimum, to force him to seek early reassignment of significant cases pending before him, and, in any event, to enhance the prospect for a conviction in an otherwise marginal circumstantial case.[3] We understand that, in response to these complaints, a criminal investigation into the disclosures was authorized and was conducted jointly by the Offices of Professional Responsibility in the Justice Department and in the FBI.

---

[2] According to testimony given to the Investigating Committee, Judge Kaufman recommended that this file be transferred to the Justice Department for secure storage and future use. The requested materials are among those identified as having been provided to John Doar, counsel to the Investigating Committee.

[3] Because of the acquittal, the trial judge found it unnecessary to conduct hearings on the issues so raised.

Against that background, we request copies of:

(a) memoranda concerning the initial disclosures and authorizing and directing the subsequent investigation;

(b) the final report and recommendations submitted by those responsible for conducting the investigations; and

(c) memoranda through which the Department reviewed the report and decided whether to accept or reject the recommendations.

4. We understand that it is the practice of the Department's Public Integrity Section to require memoranda from the attorneys assigned to an investigation such as this reporting on the status and progress of the investigation from the outset of an investigation until such time as these attorneys are in a position to prepare a definitive memorandum recommending that an indictment be sought and prosecuted or that prosecution be declined. We request copies of any such memoranda prepared in this case and any memoranda, minutes, or notes by those who reviewed and approved or revised any requests or recommendations made.

5. We understand that, before prosecutors in the Public Integrity Section can seek an indictment, they are required to prepare an extensive prosecution (or "pros") memorandum presenting a full discussion of the case, including the reasons for and against proceeding and an assessment of the strength of the available evidence. As we understand the procedure, this memorandum is presented to the Indictment Review Committee, a committee of senior prosecutors in the Public Integrity Section. If it is approved, the memorandum and the committee's recommendations are submitted to the chief of the Public Integrity Section and, in important cases, the memoranda and recommendations are then passed up through the chain-of-command for further review and final decision.

Based upon this understanding we request copies of:

(a) the prosecution memorandum that was prepared in this case;

(b) any minutes, notes, or memoranda concerning the discussions by the Indictment Review Committee and evidencing its recommendations and any dissenting or cautionary views;

(c) the memoranda or notes evidencing the views and recommendations of the section chief and others in the chain-of-command who reviewed the matter; and

(d) the notes or memoranda by the official or officials who finally authorized the prosecution which evidence that decision and the factors that were considered.

6. We also request:

(a) any status or progress reports or memorandum that were submitted by the prosecutors concerning the case during the period from December 29, 1981, the date of the indictment, through April 15, 1983, the date on which Chief Judge John C. Godbold announced that he had appointed the Investigating Committee to conduct further investigations;

(b) any memoranda or notes made by Justice Department officials evaluating the prosecution or trial or concerning actions the Department should take with respect to Judge Hastings;

(c) any notes or memoranda concerning cases that were pending before Judge Hastings on October 9, 1981, and the need or desirability of seeking his recusal or the reassignment of these cases, either prior to or after October 9, 1981; and

(d) memoranda or notes concerning interviews that the attorneys responsible for prosecuting the case conducted of witnesses and potential witnesses during the course of the investigation or in preparation for trial.

The 1985-86 Investigation Into Improper Disclosure of Confidential Information.

The materials we have received on this matter are more complete than those that have been made available concerning the prior investigation and trial. At this stage, we request only the following additional documents:

1. The memoranda and notes by which the allegations were first communicated to the Department's Public Integrity Section and by which the recommendations to conduct and participate in the resulting investigations were reviewed and approved.

2. Memoranda exchanged between the FBI and the Criminal Division or your office concerning the Public Integrity Section's decision to recommend that prosecution be declined and the Bureau's opposition to that recommendation, and any memoranda, minutes, or notes showing how the issues so raised were reviewed and finally resolved; and

3. Any memoranda or notes concerning interviews conducted by attorneys in the Public Integrity Section of FBI agents, assistant United States Attorneys, and other persons identified as potential witnesses in the matter.

As the enclosed ruling indicates, the Impeachment Trial Committee intends to expedite the trial of this impeachment insofar as possible. For that reason, Judge Hastings and I join in the committee's request for an early response to this request. If there are portions of this request that require clarification or amplification, please have the officials to whom this matter is assigned call me. In any event, we look forward to your response.

Sincerely,

Terence J. Anderson

Terence J. Anderson
Counsel for
United States District Judge Alcee L. Hastings

cc: Senator Jeff Bingaman
Senator Arlen Specter
Michael Davidson
Representative John Bryant

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

RESPONSE OF THE HOUSE MANAGERS TO RESPONDENT'S SPECIFIC REQUESTS FOR DOCUMENTS FROM THE DEPARTMENT OF JUSTICE AND THE FEDERAL BUREAU OF INVESTIGATION

Pursuant to the April 14, 1989 directive of the Senate Impeachment Committee, the House Managers hereby set forth their position on the further production of documents sought by Respondent. Respondent has made no "particularized" request for documents directly to the House of Representatives pursuant to the Committee's April 14 rulings. However the House Managers have received copies of his May 3, 1989 requests for documents addressed to Attorney General Richard L. Thornburgh at the United States Department of Justice and the Honorable William Sessions, Director of the Federal Bureau of Investigation. We address herein only those items in our possession which are identified in those requests.

Beyond the institutional concerns presented in earlier pleadings, the House Managers have no specific objections to the production of copies of those documents described in the May 3, 1989 request to Attorney General Thornburgh which the House has received previously from the United States Department of Justice. Our position is conditioned upon the requirement that Respondent agree to the confidentiality provisions to which he previously agreed with respect to the FBI documents produced to Respondent by the House Managers on April 25, 1989. With regard to the Department of Justice items, the House has in its possession documents in only two of the categories described in Respondent's May 3, 1989 request: (1) a redacted version of the prosecution memorandum in the bribery conspiracy case; and (2) notes concerning interviews by Department of Justice attorneys of witnesses and potential witnesses during the course of their investigation and preparation for trial.

With regard to the documents requested by Respondent from the Federal Bureau of Investigation, the House has already provided for Respondent copies of all of the materials which the House received from the FBI.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /PW
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

May 5, 1989

PRETRIAL FILINGS FROM MAY 10, 1989, THROUGH THE FOURTH ORDER OF MAY 24, 1989

XVI. FILINGS ON TRIAL PROCEDURES

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

RECOMMENDATIONS OF THE HOUSE MANAGERS ON TRIAL PROCEDURES

In its Second Order on pretrial issues, dated April 21, 1989, the Senate Impeachment Trial Committee invited the parties to comment on two issues prior to the May 17, 1989 pretrial conference with the Chairman and Vice-Chairman. The first issue focuses on methods of reducing the number of live witnesses during the presentation of evidence before the Committee. The second issue is whether to bifurcate the evidentiary proceedings. The position of the House Managers on these issues follows.

I. Methods of Reducing the Number of Witnesses

The Impeachment Trial Committee took the first step toward reducing the number of witnesses by limiting the time allotted for trial. The House Managers suggest that the Committee take the further step of establishing timekeeping procedures. The House Managers recommend that the Committee 1) establish the total amount of hours allotted for the presentation of evidence, 2) divide that time evenly between the parties and 3) direct each party to present its case within the time allowed. The Managers also suggest that each party be charged with the amount of time it uses to present its case through opening statements, the direct examination of its own witnesses, and the cross examination of the opposing party's witnesses. In addition, the House Managers recommend that minor delays in the presentation of evidence, such as short evidentiary objections, should not stop the clock. Major delays, however, such as Senate or House votes or extended arguments, should not be charged to either party.

The House Managers believe that these timekeeping procedures are the best way of limiting the number of witnesses during the presentation of evidence to the Committee. They allow each side to control the presentation of its own case and determine the most effective use of its allotted time, while accomplishing the Committee's goal of limiting the time needed for trial. In addition, by including the cross examination by a party within that party's hours, the Committee will protect against one party usurping the other party's allotted time.

There is precedent in the Federal courts for adopting such timekeeping procedures. In the trial of Westmoreland v. CBS, United States District Judge Pierre Leval determined the total amount of time allotted for the presentation of evidence, divided that time between the parties and kept track of the time used in a manner similar to that suggested above. The House Managers attach hereto an article written by Judge Leval on the procedures.

Within this framework, the House Managers also recommend that the Committee accept prior testimony given in United States v. Hastings, United States v. Borders, and the two Investigating Committee hearings, if it is offered by a party in lieu of live testimony in its case in chief or rebuttal. If such prior testimony is offered by either party, the complete testimony of that witness should be submitted into the record. If the opposing party wishes to supplement the record, the witness can be called to testify by that party in its case. By permitting the parties to rely on prior testimony, the Committee again allows each side to determine the best method of presenting its case while promoting efficiency at trial.

The first step toward instituting these timekeeping procedures is for the Committee to determine the total amount of time authorized for trial. The House Managers suggest that when determining the total hours, the Committee should exclude from its calculation a reasonable estimate of the time needed for 1) unavoidable interruptions such as Senate and House votes, and 2) any questioning of the witnesses by the Senators -- for only then will each party be able to plan effectively the presentation of its case. Given the three week period established by the Committee, the House Managers ask that six hours per day be allotted for the presentation of evidence, excluding the time allowed for unavoidable delays and Committee questioning. Each side would therefore have a total of 45 hours of trial time to conduct direct and cross examination.

The House Managers also suggest that each party be allotted 15 additional hours for rebuttal or surrebuttal. These additional hours would necessarily require a trial lasting up to four weeks.

Finally, the House Managers suggest that at the close of each trial day, the parties should be advised of their remaining time. Obviously, the suggested procedures require the Committee to designate a monitor. However, as Judge Leval learned in the Westmoreland case, timekeeping will accomplish the goal of limiting the trial. Given the large number of articles in this impeachment case, the many witnesses designated by the parties and the limited time available, the House Managers believe that the suggested procedures will accomplish the goal of reducing the witnesses, while allowing each party the greatest control over the presentation of the evidence.

II. Bifurcating the Presentation of Evidence

The House Managers support bifurcating the presentation of evidence during this particular impeachment trial. We therefore recommend that the Committee begin the proceedings with opening statements by both parties on Articles I through XV and the relevant portion of Article XVII. The House would then present its evidence on these articles, followed by the presentation of evidence by Respondent. Rebuttal and surrebuttal on these articles, if any, would follow. The hours used for rebuttal and surrebuttal would be subtracted from the 15 hour total set aside for this purpose.

The parties would thereafter give their opening statements on Article XVI and the remaining portion of Article XVII. The presentation of evidence on this charge would follow. Rebuttal and surrebuttal on the Title III charge, if any, would then be presented, assuming the parties have rebuttal and surrebuttal time remaining.

The obvious advantage of bifurcating the presentation of evidence is it allows the parties and the Committee members to focus on the separate charges contained in the Articles of Impeachment. Two opening statements also accomplish this goal. Bifurcation also allows everyone to be more organized by having separate exhibit books for the two phases of trial.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron /LF
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

May 10, 1989

From the Bench

Westmoreland v. CBS

by Pierre N. Leval

United States District Judge
Southern District of New York

Sometimes our system works better if we take some liberties with the customary procedures.

The trial of *Westmoreland v. CBS* presented circumstances that justified altering the usual rules governing time and summation. The changes we adopted were: a limit on the number of hours for each party's presentation of evidence and the opportunity for counsel to address the jury from time to time throughout the trial.

Both were designed to deal with problems of longer trials. The first concern is the risk of overexpansion of the witness lists and endless duration of the trial. The second problem is the absence of opportunity over a long time for the jury to hear explanations of complicated evidence.

- *Time Limit.* The subject matter of the *Westmoreland* trial was vast: CBS alleged dishonesty by General Westmoreland and the U.S. Military Command in Vietnam (MACV) over a period of a year in understating the size of the enemy in order to substantiate an over-optimistic assessment of the progress of the war. General Westmoreland alleged dishonesty by CBS in the preparation of a one-and-a-half hour documentary film making the above accusations against him. Potential witnesses on CBS's honesty included a dozen who worked on the broadcast, 80-odd [illegible] were interviewed for the broadcast, and a few more who were not. Potential witnesses on the issue of the honesty of the military included hundreds who had worked in its widespread intelligence establishment and dozens more who, in other intelligence agencies or government posts, received intelligence reports and information from MACV.

Furthermore, since an issue was the size and military capability of the Viet Cong irregular militia, the potential witnesses might have included some 500,000 U.S. servicemen who had experienced encounters with the militia, if not another several million Vietnamese from both sides who would probably have been best informed on the subject. (It may be an example of American insularity that no Vietnamese witness was called by either side.)

Each side had exhibited a determination to win at whatever cost. There was certainly a risk that, without the imposition of controls, the trial might run on inordinately.

The question was how to fashion the controls.

I Am Skeptical

The classic approach is for the judge to disallow witnesses who are "merely cumulative" and to curtail cross-examination when it becomes repetitive or unproductive. For several reasons, I am skeptical of the value of this technique. First, the judge ordinarily does not know the testimony of a witness until he has heard it. Second, evaluation of the importance of the testimony can be difficult in a complicated case, and more time may be spent in explanations than is saved by the cut-off order. Third, I cannot say that cumulative testimony is necessarily without value when the issue is disputed. (As to whether, at a particular meeting, General Westmoreland did or did not say that a new higher intelligence estimate would be a "political bombshell," presumably counsel on one side or the other would want to call each person who had been at the meeting and had a recollection to give.) Moreover, the testimony, although unimportant, may not be technically cumulative. Finally, the obligation to decide what is important and what is clutter belongs more properly to counsel than to the judge. Those are strategic decisions; ideally, the judge should not make them.

One approach which has been used successfully in my district is to give each side the same number of weeks or months for its direct case, including the adversary's cross. This seemed to me to have drawbacks. First, it involves questionable assumptions: Each side's evidence is not necessarily of the same bulk nor is each side's evidence necessarily presented on its case, rather than through cross of the adversary. When both sides are presenting evidence through the same witnesses, the trial can be largely completed after the direct and cross of the plaintiff's witnesses. If times are limited this way, each side has an incentive to drag out its cross at its adversary's expense. A short cross is a gift to the opponent.

It seemed to me preferable to charge each side for the time *it* used, whether on direct or cross or otherwise presenting evidence. Each side would be alloted the same number of hours. As in a chess match, when it's your move, your clock is running.

Questionable Assumptions

Of course, the fairness of this system also depends on an assumption whose validity may be questioned. The assumption is that, on an average taken of many witnesses, cross will consume time roughly equal to the direct. If this assumption is reasonable, the system will work fairly whether 30, 50, or 100 percent of the witnesses are heard on plaintiff's direct case. One can imagine cases where it might not work. Probably it should not be tried in a short case as scope is needed to permit deviations to average out. But in the long run, at least for this trial, it seemed to work quite well.

Hindsight gives a clearer picture of several problems a judge would do well to explore in advance of trial, if using this system.

Selecting the proper number of hours is the biggest problem. If the judge picks too low a number, this could be a disaster. Such a mistake might not be correctable by adding allowance later on because counsel might earlier have made irretrievable sacrifices. Surely the best way to start looking for the right number is by consulting counsel. If their answers seem responsible, that may be the best place to end. Ideally, counsel would agree to the limit. If their demands seem inflated, they should be required to justify them with a detailed plan, budgeting the allocation of direct examination to each witness. And if the judge suspects counsel of packing the budget with allowances for witnesses who will not be called, he can provide that time may not be transferred from uncalled witnesses.

I would caution the judge not to cut it too fine and, as a safety valve, to advise the parties from the start that he may grant a modest extra allowance to a party who runs out of time in spite of a responsible effort to stay within budget.

The question of a rebuttal case should be addressed at the outset and an understanding reached as to whether it must be budgeted from the original allotment or whether a separately dedicated allotment will be made.

A significant problem that warrants attention at the outset is the turnover point – after how many of the plaintiff's hours will he rest his direct case and turn the helm over to the defendant. This point should be identified with some precision at the start of trial so that the defendant can allocate his time between cross of the plaintiff's witnesses and direct of his own. If none is set, there is a danger that the plaintiff might go on calling witnesses requiring the defendant to cross-examine and leaving the defendant with inadequate time for his direct case. I do not mean to suggest that the plaintiff's direct should be presumptively limited to 50 percent of his time. As noted above, sometimes the great majority of the trial will occur on the plaintiff's case. Furthermore, if a party wishes as a strategic matter to make cross-examinations short and concentrate on direct (or vice-versa), this should be permitted. Probably the matter is best handled in pretrial negotiation, including disclosure of both sides' proposed expenditures of time for direct examination. Reasonable allowance should be made for changes of strategy based on the events of trial. If the plaintiff substantially overshoots, the judge can either disallow testimony or can grant the defendant an additional compensating allowance.

There is little doubt that, if use of this system proliferates, the inventive minds of counsel will develop time-directed tactics of gamesmanship, such as diabolically short conclusory directs, giving the adversary the practical option of leaving the witness untouched, or spending a long time bringing out the basis of his conclusions so as to try to undermine them. In some instances, these tactics will be abusive and unfair. The court should make clear in its initial order that it retains the power to modify the allotments to prevent unfairness. A possible remedial technique discussed in *Westmoreland* was to give the cross-examiner a longer time at no greater charge than the time expended on direct.

No Contrary Authority

I have been asked whether I am confident of the lawfulness of such a limitation on trial. I know of no authority to the contrary and can see no reason why such an order should be struck down if the time allotments are reasonable. It is a common practice in the appeals courts to limit the number of pages of briefs, as well as the time for argument. Court time is a valuable and limited resource, and as the volume of litigation grows, the ability of courts to render service to the public is increasingly threatened. I would think it most shortsighted to prohibit courts from imposing reasonable limitations on the duration of trials. On the other hand, an unreasonable limitation might well be found an abuse of discretion.

Given my experience in one long trial, this technique has considerable benefits – primarily five: It requires counsel to exercise a discipline of economy choosing between what is important and what is less so. It reduces the incidence of the judge interfering in strategic decisions. It gives a cleaner, crisper, better-tried case. It gives a much lower cost to the clients. Finally, it will save months of our lives.

All counsel in the *Westmoreland* trial have told me they believe they tried their case better as a result of the time limit, and that it was shorter by a half than it would have been.

I note also an interesting suggestion made by David Dorsen, one of General Westmoreland's counsel, that the technique be adapted to control the time spent in depositions. This is certainly worth investigating.

- *Interim Summations.* In a long and

(Please turn to page 66)

trend toward admitting expert testimony. The permissible scope, basis, and form of expert testimony all have been broadened. The trend reflects the lawmakers' confidence in juries and in the adversary system.

There is still concern over the unreliability of some expertise and over the false aura of infallibility that experts sometimes project. Nevertheless, the courts' growing tendency is to admit expert testimony, leaving exposure of its weaknesses to cross-examination and rebuttal testimony.

From the Bench

(Continued from page 8)

complicated trial, there will be much that the jury will not understand. There is only so much that counsel can communicate effectively in the opening statement. Counsel may be inclined to keep the opening simple, so as not to lose rapport with the jury. Much of what is said will, in any event, soon be forgotten. The jury will have little likelihood of catching the confirmatory or contradictory relationships between different pieces of evidence. After three or four months of trial, all of this will be discussed in summations in which the jurors will be asked to remember what a witness said two months ago and to compare it to a document received a month earlier and to the testimony of another witness five weeks later—all multiplied by the number of issues and factual disputes in the case.

No question our system has served us well for many centuries. So I hope I will not be accused of wanton disrespect for precedent if I say it seems to me to have shortcomings. Perhaps the point is that trials have become more complicated since Savage snarled at Tuberville that, were it not assize time, he would give him a thrashing, *Tuberville v. Savage,* [1669] 1 Mod. Rep. 3, 86 Eng. Rep. 684. We embrace the comforting fiction that the jury understands, while adhering to ancient procedures that virtually guarantee the opposite.

The jury could be made better aware of the significance of the evidence and of its relationship to the complex issues of a libel trial if counsel were permitted to speak to the jury from time to time.

I had difficulty settling on a suitable procedure. I considered giving a fixed amount of time at scheduled intervals. But there was no reason to believe that those occasions would fall at times suitable to both sides. Since the party presenting its case would have some control over what preceded the event, such a schedule could disadvantage the defending party.

The solution I finally adopted was unstructured and, once again, biased in the direction of giving counsel maximum control. It was to give each side an overall allowance of two hours for interim summations, and to permit them to draw on it virtually as they chose, the only limitation being that the choice of moment should not interfere with the adversary's presentation of evidence or with the court's schedule.

Counsel gave *intsums,* as we called them, 84 times (plaintiff, 43; defendant, 41), each using approximately 100 of his 120 minutes before the premature end of the trial. The average intsum lasted less than 2½ minutes. They were given on 25 of the 62 trial days, on different occasions and for different purposes. Most frequently it was at the start or conclusion of a witness's direct or cross. Sometimes the examiner stopped to address the jury in the midst of his examination or on the receipt of a document or playing of a film. Often counsel responded to an adversary intsum; sometimes they declined the gambit. On one occasion, an intsum provoked a series of brief answers and rejoinders.

They were used to explain the significance, strength, or weakness of proof; to point out confirmation or contradiction of other evidence; to introduce new themes; to respond to opposing arguments; and to challenge the adversary's ability to prove his contentions.

I have been asked whether allowing interim summations invites abuse and overreaching by counsel. There is, of course, such a danger. No doubt there are lawyers with whom it would be foolish to use the procedure. If it is used, the judge might caution counsel against taking unreasonable liberties. The threat of remedial instructions should decrease any incentive to overreach. On the other hand, for the judge to invoke an automatic formulaic, "the jury's recollection governs" may be perceived as an open invitation to distort. The judge also might consider suspension of the practice if counsel proved ungovernable.

The advantages of interim summations for a long, complicated case are great. To both sides they offer a much improved opportunity to communicate their message—to have some assurance that the jury is understanding the issues and the significance of proofs.

Long trials, more than short ones, are likely to produce swings in the jury's affections by reason of the long periods of time in which first one side, then the other, controls the flow of witnesses. Interim summations can reduce those swings. During the plaintiff's onslaught, the defendant can alert the jury to his answers. And during the defendant's turn, the plaintiff will remind the jurors of his otherwise forgotten proofs.

It could be argued that the interim summation increases the opportunity for the more skilled counsel to outdistance his rival and thus makes the trial more subject to determination based on relative skills of counsel. This may be true (as it is also of the opening, the summation, and the putting of questions). On the other hand, if the interim summation gives the jurors a better understanding of the facts, it reduces their vulnerability to manipulation.

Uncharged Misconduct

(Continued from page 28)

a proper purpose somewhere in the laundry list. He knows that, sooner or later, he must specify the precise purpose for which the evidence is admissible.

Uncharged-misconduct evidence is one of the most damaging weapons that a trial lawyer can lay his hands on. It is not surprising that Federal Rule 404(b) has generated more reported cases than any other section of the rules.

In most states, alleged errors in the admission of uncharged-misconduct evidence are the most common grounds for appeal in criminal cases. In many states, errors in the admission of this type of evidence are also the most frequent grounds for reversal in criminal cases.

Yet independently relevant uncharged-misconduct evidence can be highly probative. If a criminal uses a distinctive *modus operandi*, proof that he committed another crime with the identical *modus* is persuasive evidence that he perpetrated the crime of which he stands accused. In a civil case in which the question is whether a design defect caused the accident at issue, proof of a similar accident involving the same product may be cogent evidence of causation. The other accident involving the defendant's product may be the only evidence of the product's hazardous character, and if the judge excludes the evidence, the plaintiff may suffer a directed verdict. *See, e.g., Holbrook v. Koehring Co.,* 75 Mich. App. 592, 255 N.W.2d 698 (1977).

Congress evidently concluded that the courts had too often excluded probative uncharged-misconduct evidence and that courts should place "greater emphasis" on such evidence. *See United States v. Czarnecki,* 552 F.2d 698, 702 (6th Cir. 1977). That conclusion explains the widespread trend toward the relaxation of evidentiary barriers to proof of uncharged misconduct in federal courts and the courts of those states that have adopted some version of the Federal Rules of Evidence.

It is equally clear, though, that many of the same courts believe that the balance tips in favor of admission of uncharged-misconduct evidence only when it is both reliable and used only for an independently relevant purpose. This belief accounts for the new procedural safeguards.

Pretrial notice, the specification of a theory of independent relevance, and the refinement of limiting instructions are all designed to allow or force the proponent, opponent, and judge to analyze uncharged-misconduct issues more precisely. These procedures help to guarantee that any uncharged-misconduct evidence admitted is relevant on a noncharacter theory. The new, more precise limiting instructions help jurors to understand the noncharacter theory. The new procedures hold out the promise of improved administration of the rules governing proof of uncharged misconduct.

Interview with James F. Neal

(Continued from page 34)

know, Cardinal Richelieu said, "Give me six lines written by the most honest of men, and I'll find something there to hang him." It's rare that you can't find something in a witness's prior statement to make a little progress on cross-examination with.

I'm getting ready to try a case in Houston, Texas, and the case starts in three months, but for the major witnesses the government will put on, I can tell you pretty much right now what I must get out of those witnesses and what I think they've got to tell me. Hopefully, I'll be able to do something in addition to that, but that's the lagniappe.

Now, some people can—on the record, if you read the dry transcript—appear to make a good point, but it never impresses the jury. Remember that it is the jury you're impressing. And if you've got a point, be sure you're prepared to make that point in a way that they won't forget.

I don't know what the percentages are, but sometimes I think that, in a fairly complicated case, the jury is going to understand about 50 percent of what they hear, and they are going to remember about 50 percent of what they understood. You must get them to understand and remember what helps you.

Mr. Schwartz: How do you do that?

Mr. Neal: Well, take one little technique, for example, one little thing. If you are cross-examining a witness on a prior inconsistent statement, build up to the point and then make some dramatic impact out of it so the jury doesn't forget it. Don't rush into it. Don't let the witness slide off. Get him committed that he has said such and such on his direct.

Build up to that point and have the document there available. Don't fumble with the document when you get ready to spring it. If the other side has good counsel, and you ask about a prior statement, he will jump up and say, "Well, what statement are you referring to? Where are you?" Well, you ought to be ready to keep going. You don't want to be distracted from the point, so, for example, you may want to have several copies ready. If you start into it and you have to stop and fumble around in your papers to get another copy to show opposing counsel, you may have lost the impact.

And, of course, there are all other ways you make people remember things, such as repetition, primacy, recency, appealing to both the audio and the visual senses. These are no secrets. The difference between an effective trial lawyer and an ineffective trial lawyer is that some have the art of doing it at that moment in time. But we all have the same weapons. Depends on how you use them, and, often, the breaks depend upon how long you've been in there, how comfortable you are in a courtroom.

Mr. Schwartz: What advice would you give to a young trial lawyer?

Mr. Neal: Well, it is very difficult to become a good trial lawyer now. There are not as many trials as there

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

RESPONDENT'S MEMORANDUM ON SCHEDULING AND OTHER PENDING ISSUES AS OF MAY 10, 1989

There will not be a trial that is fair to respondent if evidentiary hearings begin before resources have been made available to respondent. Time must in any event be allowed that is sufficient to enable respondent and his counsel to prepare for trial in light of the resources in fact available. The volume of new materials and the disclosures they contain illustrate the need for time and resources and confirm that the present schedule cannot fairly be maintained.

The Impeachment Trial Committee has deferred consideration of respondent's request for funds, a request first submitted to the Committee on Rules and Administration on September 19, 1988, and formalized in a motion filed March 29, 1989. By orders dated April 14 and 21, 1989, the committee has, however, established a schedule that could not have been satisfied had funding been provided and that has imposed requirements that neither side has been able to fully observe. That schedule, if pursued, would impose burdens upon respondent and his counsel that would result in a constitutional travesty rather than a trial that comports with any notions of fundamental fairness.

Those orders have, however, had the beneficial effect of generating discovery that makes it possible for respondent to illustrate these points with greater specificity than was previously feasible. We submit this memorandum for that purpose. We ask that the committee promptly authorize (or recommend that the Senate promptly authorize) funds requested for respondent's defense. In view of the resources available, we ask the committee to establish a schedule that recognizes fairness to respondent as a consideration at least as important as expedition and expediency.

Proceedings Under the Impeachment Trial Committee's Schedules to Date

Neither party has been able to fully comply with the schedule established by the Committee's first order. As the managers reported, they were unable to complete discovery production by Friday, April 21, 1989. Quite apart from procedural concerns, the delay is understandable in view of the bulk of the materials to be copied. On Monday, April 24, 1989, respondent's counsel received three boxes filled with copies of materials to which he had previously only had access at the offices of the managers' impeachment trial staff. On Wednesday, April 26, 1989, counsel for respondent received four boxes filled with new material -- three-and-a-half boxes of copies of materials the FBI had supplied to the House and a half box of discovery materials compiled by the House through depositions or otherwise. Although we now understand that the quantity is small, counsel for respondent has yet to receive materials from the Justice Department's files that the managers indicated they would seek to produce.

The volume and significance of the FBI materials supplied, combined with the understandable delays in production, made it impossible for counsel for respondent to prepare and submit particularized requests for documents to the FBI and the Justice Department until May 3, 1989. Those factors, and the time required to adhere to the committee's schedule in other respects,[1] made it impossible for counsel to complete and submit a request for specific depositions until today and required submission, even then, of a list that is incomplete.[2]

The efforts to adhere as closely to the prescribed schedule as possible have fully consumed the time and resources available since the Motion Requesting Funds for Respondent's Defense was submitted on March 29, 1989. Since that date, the undersigned has devoted more than 300 hours to producing memoranda and other documents required by the committee's requests and orders; to preparing for and attending the meeting on April 6 and the hearing on April 12;

---

[1] Counsel for respondent has also prepared and submitted Respondent's Preliminary Witness List on April 19, 1989, and specific requests for documents to the Judicial Council of the Eleventh Circuit (and the House managers) on April 26, 1989.

[2] *See* Request for Specific Depositions (May 10, 1989) at ____.

and to reviewing copies of FBI files and other new materials produced. The nature of the work required, the physical dispersion of respondent's other counsel, and the other valid claims on their time dictated that work such as that required to date be performed primarily by the undersigned. Unless and until funds are provided that make it possible to alter the present arrangement, the pattern will continue.

Under the present arrangement, the time available for preparing respondent's defense cannot be significantly increased. With the end of the academic year, the undersigned may be able to marginally increase the fifty hours a week he has been devoting to the case. The absence of funds for travel, accommodations, office space, and support staff will require that this work be done, as it is now, primarily from Coral Gables, Florida, and will handicap the effective utilization of time Professor Catz could otherwise devote, now that the academic year is over. Ms. Williams's role is constrained by the demands of her practice and the distance that separates our offices. Respondent does not have funds to effect any significant change in the present arrangements. The committee knows these constraints are real, and respondent submits that they must be acknowledged in any schedules the committee establishes.

The Recent Production and the Nature of the Work Now Required: Three Illustrations

On April 26, 1989, counsel for respondent received approximately 16,000 pages of material representing copies of files and other materials which the House had obtained from the FBI. An inventory of those materials is appended to this memorandum. Some of those materials were duplicative of materials counsel had previously examined; most, however, were new. Even materials that were previously examined must now be re-examined in the context of the files of which they are a part in order that their significance might be properly assessed. Based upon his preliminary assessment, counsel for respondent has concluded that approximately 14,000 pages must be examined with some care.

Three points discovered to date should suffice to illustrate the relevance and importance of these materials and the need to afford counsel sufficient time to review and digest them with care:

1. Nesline's Report to the FBI -- Hastings is Innocent; Doar's Response -- Who Cares? In the course of a 1985 investigation, Joseph Nesline, the Washington underworld figure, who must have known, expressed his view: Borders had no control or influence over Judge Hastings and was simply running a scam. Nesline also disclosed that Borders was sending him letters through an intermediary and that Nesline was sending Borders money in prison. The FBI files disclose that the FBI made this information available to John Doar and that Mr. Doar advised the FBI that the Investigating Committee did not want the FBI to pursue further inquiries along this line. The fact that the Investigating Committee did not even seek to compel Nesline's testimony even after

receiving this information can only be described as stunning in light of these disclosures.[3]

This is an outrage the committee cannot ignore. It now appears that in 1985 there was evidence in the form of Nesline's testimony and Borders's letters that might have established Judge Hastings's innocence or that, if pursued, might have generated other evidence corroborating his claims. The fact that this evidence was not immediately and vigorously pursued by the FBI and by the Investigating Committee is an outrage. The fact that the evidence was not pursued by the House subcommittee during its year-long inquiry is an outrage. The fact that the material was not (and but for this committee's order might never have been) disclosed to respondent is an outrage. That fact alone should foreclose any further platitudinous claims that the House conducted a thorough and impartial inquiry or that its staff has long since provided respondent with all materials necessary to prepare a proper defense. In respondent's view, this disclosure and the outrages they reveal should suffice to end these proceedings.

As the committee must know, there are different kinds of due process violations that can arise from improper governmental conduct. Two are relevant to the issues here. There are, on the one hand, violations that are unrelated to an accused's guilt or innocence -- *e.g.*, unlawful searches and seizures of evidence and the like. But there are, on the other, violations that are directly related to the accused's guilt or innocence -- *e.g.*, those that occur when prosecutors ignore or suppress evidence that might exculpate the accused or aid him in establishing his innocence. Whatever the committee's view of the relevance of the former, it cannot ignore the presence of the latter. The materials now made available make it clear that violations of the kind that cannot be ignored occurred in the post-acquittal investigations in this case.

---

[3] Counsel can and will develop this information in more detail at a later date. For the moment, he has honored the managers' request that he treat sensitive information with such deference as is consistent with his duties to respondent.

Full consideration of these violations and their significance must be deferred to a later date. But the presence of these materials in the recently produced files makes it clear that respondent must now be allowed time to fully examine the materials provided and to pursue now inquiries that should have been pursued over the past four years, to the extent that remains possible. That will take time and resources, but issues of this kind are not issues that can be swept under the rug and ignored in the name of expedition and expediency.

2. FBI Agent Mazzella Lied About Mayor Stephen Clark. Christopher Mazzella was the supervisory agent in Miami who directed the FBI's investigation into the alleged disclosure to Mayor Clark. On June 1, 1988, during the hearings before the House subcommittee, FBI agent Mazzella was repeatedly asked whether the FBI had any information that called Mayor

Clark's credibility into question or that might have given the FBI leverage in inducing his testimony against Judge Hastings. Two exchanges should suffice to illustrate the tenor of the questions and his responses:

> MR. EDWARDS. I am sure you checked out carefully important witnesses in the FBI files?
> MR. MAZZELLA. Right.
> MR. EDWARDS. . . . [C]an you tell us, is it absolutely clean insofar as FBI files are concerned with Mayor Clark?
> MR. MAZZELLA. I can't make any representation of that from my point of view here without checking it further, but let me put it this way. There is nothing in his record or in any information we have that would tend to make me think he is lying.
>
> ***
>
> MR. BRYANT. . . . One final question. You were well aware that people quite often want to be cooperative with the FBI in the event they are facing some type of trouble themselves. That is, prosecution or investigation or some other concern about what your intention towards them might be. I want to ask once again for you to make it clear to us, Mayor Clark's situation in that regard. Did the FBI have any type of leverage at all over Mayor Clark at the time that he told you about Judge Hastings' disclosure to him?
> MR. MAZZELLA. The only leverage we had were his own words on tape. Whatever that is worth. There were no prosecutive -- no potential prosecution against him. We didn't confront him with the possibility of other charges if he didn't cooperate. And their really, wasn't anything we had on him to convince him to testify truthfully.

That was the sworn testimony of the FBI's supervisory agent on June 1, 1988.

The FBI materials produced on April 26, 1989, contain a telex dated March 3, 1986, from the Miami field office to FBI headquarters in Washington concerning the investigation. In explanation of its proposed strategy, the telex reports:

> On the other hand, Miami does not believe locking Clark into his testimony by way of Grand

> Jury appearance prior to consensual monitoring is necessary for the following reasons:
>
> . . .
>
> 2. The Department of Justice (DOJ) has already authorized the prosecution of Clark under Title 18, U.S.C., Section 1001 [making false, fictitious, or fraudulent statements]. Clark's testimony before a FJG could significantly impede prospects of such prosecution thereby eliminating a bargaining tool in seeking Clark's cooperation.
>
> . . .

There is little reason to expect that agent Mazzella's respect for an oath to tell the truth before a committee of the Senate will be any greater than that shown by the testimony he gave under oath before a subcommittee in the House. That, however, is beside the immediate point.

The House subcommittee should have provided counsel for Judge Hastings a copy of that telex before its hearings. That telex should have been before the members when they questioned agent Mazzella. At a minimum, the impeachment trial staff should have brought the telex to the subcommittee's attention during or soon after agent Mazzella testified.

The fact that none of these steps were taken establishes two points that are relevant here. The House managers cannot suggest and the committee cannot properly require that respondent's right to compel the production of documents be governed by determinations made by his accusers concerning what constitutes material that should be disclosed in the interests of justice. The fact that materials which may contain telexes such as the foregoing have been withheld to this late date renders that position untenable.

Second, respondent must now be afforded adequate time to examine and analyze the materials that have now been produced (all 16,000 pages of them) as well as those that must be produced in the future, before his counsel are required to make decisions concerning stipulations or other matters that may affect the conduct of the trial and respondent's ability to defend himself.

3. The Decision to Arrest Borders at the Scene of the Payoff. At the 1983 trial and before the Investigating Committee, agent Murphy testified that a spontaneous concern for the undercover agent's safety was a significant factor in the decision to arrest Borders at the scene of the payoff rather than letting him take the money to determine whether funds would be paid to Judge Hastings. On the eve of the hearings before the House subcommittee last spring, we obtained a copy of an FBI telex dated October 8, 1981, which confirmed that the FBI had in fact planned in advance to arrest Borders at the scene and that the decision was based upon factors unrelated to concerns about the agent's safety.

The materials just produced reveal that the proposed arrest scenario had been developed by September 24, 1981, and was predicated upon Judge Hastings's issuing the *Romano* order by September 30, 1981, as Borders had promised. Those documents show that Director Webster had personally conditioned his approval of the proposed scenario upon his subordinates obtaining the Justice Department's agreement that the arrest would take place at the scene. They also indicate that this decision was predicated on the view that Borders's appearance would generate more than enough evidence to warrant his prosecution, but that, absent further evidence, the dinner at the Fontainebleau *and* the issuance of an order on September 30 would be insufficient evidence of the judge's involvement to warrant risking the $125,000 with Borders. The *Romano* order was not issued by the date Borders had promised, and the FBI had less, not more, evidence of the judge's involvement when the arrest was made.

Those materials also disclosed that a meeting took place three days before the arrest at which subordinate FBI officials and Justice Department attorneys involved in the investigation discussed the prospects for forcing reassignment of an important case pending before Judge Hastings. The Department's attorneys reportedly decided that that would not be feasible under the circumstances known at that date. This disclosure raises new and troubling issues concerning the "leaks" of information to the media that immediately followed the arrest, issues that must now be explored in some depth.

At a minimum, these materials shed new light on the credibility of agent Murphy's and Reid Weingarten's prior testimony. Their presence in these files should suffice to illustrate the need for a careful review of all materials in the FBI files on Operation Apple Eye.

The Schedule Revisited
It Is Not Fair And It Will Not Work

Respondent recognizes that the Impeachment Trial Committee has been assigned an unwelcome burden, and one that it would like to discharge as rapidly as possible. Respondent has no quarrel with committee decisions establishing deadlines intended to assure that the managers and his counsel proceed with as much dispatch as is feasible in the circumstances. Respondent appreciates the fact that the committee has taken positions that have generated significant discovery without the necessity of protracted argument over the principles involved.

Respondent submits, however, that the schedule established by the committee order dated April 21, 1989, must yield to the requirements of fairness in this case. In the absence of the funds requested, his counsel cannot devote significantly more time than they have to date and, in fairness, they should not have been and should not be required to continue without compensation. The House managers continue to enjoy unconscionable advantages through their access to their well-supported, four-lawyer impeachment trial staff and to the House contingent fund. To these must be added the advantages they have enjoyed throughout. The present imbalance must be redressed, and that will require time and money.

Respondent also submits that the disclosures revealed by a preliminary and partial examination of the FBI materials produced should resolve any doubts in the committee's minds concerning the relevance of these materials and respondent's need for the additional materials he has requested. Production must be completed, and his counsel must be afforded a fair opportunity to examine and digest these materials. These materials should also resolve any doubts the committee might otherwise have had concerning the need to depose persons with information relevant to his defense -- information that should have been gathered and made available long ago, but that was not.

The committee should now reconsider the proper schedule in light of the additional information that has become available since the hearings on April 12, 1989. Respondent submits that this additional information makes it clear that his request for funds should be granted as soon as possible and confirm that the time he requested in his initial memoranda to the committee represented a conservative estimate of the time required for adequate preparation and for a trial that is fair. He and his counsel cannot physically or fairly meet the demands of the present schedule for pre-trial submissions. The trial cannot be completed in four weeks, if the committee intends to hear both sides of the case.

Accordingly, respondent requests that the committee review its previous decisions in light of this memorandum and the developments that have taken place. He asks that the *Motion Requesting Funds for Respondent's Defense* be considered and granted. He asks that the pre-trial schedule be revised to assure that he and his counsel are afforded adequate time to prepare in light of the resources that will be available. He asks that evidentiary hearings be rescheduled to permit the necessary preparation and a full presentation of the evidence on both sides.

Respectfully submitted,

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

May 10, 1989

Confidential & Privileged
Attorney Work Product

Released as Exhibit - 5/10/89 TJA

May 1, 1981

To: File

FR: TJA

Re: FBI Files Produced By the House of Representatives

I received four boxes of materials on Wednesday, April 26, 1989. One of these boxes contained four folders - - 1. "Hastings/Borders References Contained in Joseph Nesline's Files" (about 1000 pages); 2. Discovery Materials (which included depositions taken by Special Counsel (about 1000 pages with exhibits), a slim file containing DOJ materials (about 10 pages), and a Brady memo (2 pages); 3. FBI Wiretap (the Mayor Clark Disclosure Materials) (about 1000 pages); and 4. Borders - Gov't Exhibits (about 100 pages). The materials in folders 1 and 2 were examined and partially abstracted on Saturday, April 29, 1989. (See separate memorandum).

The remaining three boxes contained redacted files from FBI investigations related to Judge Hastings over the years. These materials appear to include files from FBI headquarters (HQ) and from the Washington (WF) and Miami (MM) field offices. For each investigation, the first two digits appear to be assigned from HQ and to be employed in all field office files. The remaining digits differ from office to office. A preliminary inventory is attached.

Based upon a rough estimate, the three boxes of FBI materials submitted amount to an estimated 16,000 pages. Excluding categories that appear only marginally relevant, approximately 12,000-13,000 pages will have to be examined with care. The FBI materials supplied from the FBI Nesline Materials are new. Those concerning Mayor Clark overlap to a significant extent with materials previously examined. Nonetheless, a careful review will be required to reconstruct the FBI internal decision record. In the aggregate the production of these materials will require a careful review of more than 14,000 pages.

Preliminary Inventory
FBI Files Received From House

Headquarters Files

HQ 58-10762: Operation Apple Eye

These files consist of two volumes. Estimated at 1000 pages.

HQ 62-120955: Request for Investigative Assistance by Chief Judge John C. Godbold, Eleventh Judicial Circuit, concerning U.S. District Judge Alcee L. Hastings

The files consist of twelve volumes - - eight sequential volumes and four "EBF" volumes. Estimated at 4000 pages.

HQ 77-137744: [FBI Background Investigation]

One volume was supplied. It probably amounts to 400 pages.

HQ - Reference Packs

There are four reference packs, apparently containing references to Judge Hastings culled from other HQ files. These probably amount to 600 pages.

HQ/MM - [Political Investigation Files]

This is a poorly copied, poorly organized collection of materials concerning the possibility of racial or political disturbances in Miami/Ft. Lauderdale in 1969. ALH is identified as a black community leader. About 200 pages.

Miami Files

MM 58-623: Operation Apple Eye

There are twenty volumes in all -- three volumes of main files; five volumes bearing designation MM58-623-1A; and thirteen volumes of subfiles. There are probably 2500 pages.

MM 62A-7251: Request for Investigative Assistance by Chief Judge John C. Godbold, Eleventh Judicial Circuit, concerning U.S. District Judge Alcee L. Hastings

There are six volumes -- four main volumes and two subvolumes bearing designation MM 62A-7251-1A. There are probably 1500 pages.

MM77-9409: [ALH: 1979 Background Investigation]

One volume, about 300 pages.

MM9A-3709: Committee of Vigilance, etc.

There are four volumes -- two main and two with additional suffix "1A". They deal with a radical political group that sends threatening messages to or concerning political figures. ALH is in good company. About 1000 pages.

MM [No. Redacted]: Wiretap Investigation

These are progress reports etc. covering period 6/20/85 to 8/16/85 concerning ILU/Gordon investigation. Totally redacted. About 10 pages.

MM72-219: Unknown Subj: Obstr. of Justice

An investigation of possible jury interference in *U.S. v. Aboudando*, a case tried before ALH in 1984. The investigation came to nothing, and ALH was not a suspect. About 10 pages.

MM47-6294: Unknown Subj.: Impersonation of ALH (Zenda Clark)

In early October 1982, Zenda Clark of New Jersey called ALH to advise him that a man had been posing as him. On October 5, 1982, ALH reported this to FBI Miami. The sporadic impersonation lasted from September 5 through October 5, 1981. There was a final call from unknown suspect to Clark on October 7. File reflects investigation of ALH trip to Newark on 10/22/82 to conduct his own investigation. About 25 pages.

MM157-4386-3: [No title]

Only a single illegible newspaper clipping supplied. Two pages.

Washington Files (Field Office)

WF58-1899: Operation Apple Eye

The Washington Field Office files consist of five main volumes and sixteen volumes of sub files that appear to be incomplete -- *e.g.*, there is no volume for WQF58-1899-sub A, although there is a sub C, etc. Approximately 2500 pages supplied.

WF62-1104: Request for Investigative Assistance by Chief Judge John C. Godbold . . . etc.

This is the companion to the HQ and Miami files. Three volumes, two main and one sub files, have been submitted. The sub file is WF62A-1104 Sub C suggesting that some volumes have been omitted. About 500 pages.

WF9 5302: Committee on Vigilance, etc.

The companion political threats file in two volumes; about 500 pages.

WF77-107125: [ALH - 1979 Background Investigation]

About 40 pages concerning ALH time in D.C. and at Howard.

WFO - References

Miscellaneous references from other files. About 25 pages. This includes additional materials on Nesline/Dredge.

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In Re :
:
:
:
:
IMPEACHMENT OF JUDGE :
ALCEE L. HASTINGS :

HOUSE MANAGERS' RESPONSE TO RESPONDENT'S MAY 10, 1989 MEMORANDUM ON SCHEDULING

In his submission of May 10, 1989,[1] Respondent seeks a delay in the commencement of the evidentiary hearings and funding for his defense. In support of these requests, Respondent relies upon information contained in FBI documents recently produced to him as part of the discovery process in this impeachment proceeding. The House Managers take no position on Respondent's request for funding. However, we must point out that Respondent's argument that matters revealed in the FBI documents support his request for more time is completely unfounded.

Respondent contends that three illustrations demonstrate the need for further time to investigate. In fact, Respondent's argument based on these examples demonstrates that Respondent has misperceived the scope of discovery ordered by this Committee on April 14, 1989, mischaracterized the information contained in the documents he has received, and relied upon speculation to obtain the requested delay. Moreover, Respondent's reliance on a document originally produced in February, 1989, is indicative of the fact that his demand for more time arises out of his failure to utilize the time and records already made available to him.

---

[1] See, "Respondent's Memorandum on Scheduling and Other Pending Issues as of May 10, 1989" [hereinafter "Respondent's Memorandum on Scheduling"].

(1) The First Example: The Nesline Records have been Mischaracterized

In his first illustration, Respondent relies upon the records of an undercover investigation of Joseph Nesline to make factual assertions which the records themselves do not support. He also relies upon pure speculation when contending that both John Doar and the House of Representatives have acted "outrageously" by failing to produce those records at an earlier time. Nothing in the Nesline records provides a basis for delaying this proceeding.

Respondent characterizes those records as establishing the following:

> In the course of a 1985 investigation, Joseph Nesline, the Washington underworld figure, who must have known, expressed his view: Borders had no control or influence over Judge Hastings and was simply running a scam. Nesline also disclosed that Borders was sending him letters through an intermediary and that Nesline was sending Borders money in prison. The FBI files disclose that the FBI made this information available to John Doar and that Mr. Doar advised the FBI that the Investigating Committee did not want the FBI to pursue further inquiries along this line.[2]

A review of the actual records[3] shows that Respondent's concept of full and accurate disclosure to the Committee is sorely strained. For example, he fails to report that in the sentence following the assertion that Nesline believed Hastings to be innocent, Nesline states that all his information about Hastings is based upon newspaper accounts. Moreover, Respondent does not mention that throughout the relevant FBI documents, Nesline consistently states that he has no knowledge at all of the bribery scheme. Assuming Mr. Doar did decline to press the investigation of Nesline, this data was surely relevant to the decision.

---

[2] Id. at 5.

[3] Because of the confidential nature of the materials in question, the House Managers have not included them as part of the public record. A copy of the document which Respondent appears to be relying upon has been provided to Respondent and to the Senate Impeachment Trial Committee for their review in camera, as Exhibit A. See, in particular, pp.11 and 16.

In addition to this failure to present the full record, Respondent has misrepresented to the Committee the facts contained in the Nesline files. As the attached document shows, Respondent's assertion that Nesline was sending Borders money is without support. The document states that Nesline sent money to an "unnamed individual" at Lewisburg Federal Correctional Institute. Borders is never mentioned as the recipient of the money, and in any event, he was incarcerated at Allenwood, not Lewisburg.

In short, Judge Hastings has accused the FBI, the Investigating Committee and the House of Representatives of acting outrageously. If there is an outrage, it is Respondent's inexcusable distortion of the record.

(2) The Second Example: The "Recently Produced" Telex regarding Possible Prosecution of Mayor Clark was Previously Published and Produced.

Respondent states that he has just received an FBI telex which proves that an FBI agent lied in his testimony before a House Subcommittee impeachment hearing. The Managers vigorously deny that the agent lied during his testimony. It is apparent from the record that the agent understood Mr. Bryant's question to be whether, at the time of the interview of Mayor Clark, the FBI had any information based on the Mayor's past conduct, which would provide leverage over the Mayor. Mr. Mazzella's response that there was no such information was accurate.[4] In any event,

---

[4] The facts surrounding the statement in the telex regarding prosecution of Mayor Clark under Title 18, Section 1001 are not in the record. Therefore the House Managers make the following proffer:

The March 3, 1985 telex was written by Geoffrey Santini, the case agent in the wiretap disclosure. His statement that the Department of Justice had already authorized prosecution of Mayor Clark under Title 18 Section 1001 of the Federal criminal code (making a false statement in a federal matter) was based on a conversation between Santini and Christopher Mazzella of the FBI and Eric Holder and John Campbell, of the Public Integrity Section of the Department of Justice. During that conversation, which was prior to the interview of Mayor Clark, Holder and Campbell said that if any of the four witnesses the FBI was planning to interview (viz., Mayor Clark, Peter Ferguson, Stu Morrison and Richard Bonehill) lied at their interview, the witness would be prosecuted under Section 1001. During his interview with the FBI, Mayor Clark gave an account of the events which was not nearly so detailed as the agents had expected based on the information they had received from the wiretap and the debriefing of the confidential informant. Because the agents did not know whether Clark had been completely candid, at the time the teletype was written they believed that the potential for prosecution might still arise. Ultimately, Clark passed a polygraph and it became clear that Clark had given a full account of the wiretap disclosure by Judge Hastings. In fact, actual the only issue before the Committee at this time is Respondent's plea for more "time to fully examine the materials provided and to pursue now inquiries that should have been pursued over the past four years . . . ."[5] With respect to this, it is dispositive that the referenced document was reprinted in the Subcommittee's published hearing record,[6] and provided to the Respondent in February of 1989. As the House Managers have emphasized repeatedly, Respondent was provided a wealth of information prior to any formal discovery before this Committee. Respondent's failure to review the record given to him at earlier stages of these proceedings seriously calls into question his assertion that a continuance is warranted because of the volume of "new materials" he has recently received. Respondent's carelessness in the past does not justify his request for more time before this Committee.

(3) The Third Example: Respondent Distorts the Record in describing the Decision to Arrest Borders at the Scene of the Payoff

Respondent argues that recently disclosed documents prove that the FBI planned to arrest William Borders at the scene of the payoff notwithstanding the fact that the evidence obtained by

---

prosecution of Mayor Clark was never authorized because no facts ever developed to support such prosecution.

[5] Respondent's Memorandum on Scheduling at 7.

[6] "Materials Relating to Wiretap Disclosure," Appendix IV, Hearings before the Subcommittee on Criminal Justice of the Com. on the Judiciary, House of Representatives, 100th Cong. 2d Sess. (1988) at 1038-1045.

that time against Judge Hastings had not satisfied a previously established criterion that the Romano order be issued by September 30, 1981. He argues that this "new" information is relevant to issues of credibility.

Once again, the Respondent has misstated the import of the document he purports to rely upon. In fact, the memorandum of September 24, 1981[7] which Respondent appears to be relying upon, does not predicate the arrest scenario upon the issuance of the Romano order by September 30, 1981.[8] It assumes the issuance of the order by September 30, 1981 and suggests that wiretap authorization should be sought in order to substantiate the case against Respondent. Instead of establishing rigid criteria without which the case could not go forward, the document specifically memorializes the need to maintain flexibility and the ability to revise the plan as the circumstances dictate.[9]

As events subsequently evolved, the order was not issued on the date originally promised by Borders, and authority was sought solely for a wiretap on Borders' telephones. The wiretap was expected to and did yield evidence incriminating Judge Hastings, facts which were known at the time the undercover operation was terminated. Therefore Respondent's argument that the arrest of

---

[7] A copy of the September 24, 1981 memo has been provided to Respondent and to the Senate Impeachment Trial Committee *in camera*, as Exhibit B.

[8] *See*, Exhibit B.

[9] *Id*. at 2.

Borders at the scene is evidence of a conspiracy to target Respondent because that arrest was inconsistent with the terms of a memorandum written two weeks prior to the arrest is totally unsupported. The memorandum stressed the need for flexibility. The manner in which the events unfolded was not anticipated. And the arrest of Borders at the scene was consistent with all of the information which the FBI had obtained by the time of the arrest.

Respondent also incorrectly states that Director Webster "had personally conditioned his approval of the proposed scenario upon his subordinates obtaining the Justice Department's agreement that the arrest would take place at the scene." The memorandum of September 24, 1981 contains a directive from Judge Webster, but it is not what the Respondent claims it to be.[10]

Aside from the question of whether Respondent has fairly stated the evidence, the primary question remains as to whether Respondent's arguments are relevant to the issues at hand. Clearly, even if the allegations raised by Respondent were true, they do not support his plea that newly discovered evidence justifies a further delay in the trial. As Respondent acknowledges, he has known for over a year that the FBI planned to arrest Borders at the scene of the payoff. Whether this decision was made two weeks rather than one day before Borders' arrest cannot possibly have any bearing on the credibility of any House witness. Likewise, Respondent fails to articulate the relevancy of the alleged fact that there may have been discussions in the Department of Justice as to whether Judge Hastings could continue to preside over sensitive cases after the Department had reason to believe he had conspired to solicit a bribe.

---

[10] Id. at 1.

For the foregoing reasons, the House Managers submit that Respondent has made no showing that any delay is warranted.

Respectfully submitted,

The United States
House of Representatives

By Alan Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

May 17, 1989

XVII. DEPOSITIONS

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

REQUEST FOR SPECIFIC DEPOSITIONS

Respondent requests that the Impeachment Trial Committee authorize the issuance of subpoenas to enable him to take the depositions of persons listed below prior to the commencement of evidentiary hearings. In order to assist the committee in understanding the need for these depositions, we have grouped the requests into the categories specified below.

I. PERSONS WITH KNOWLEDGE RELEVANT TO ARTICLES I-XV.

A. Participants in Borders's Scheme

It is clear that Borders was attempting to sell his claimed powers to the underworld through Joseph Nesline and William Dredge (and probably others). As early as January 1987, we identified the most plausible theory supported by the evidence gathered by the Investigating Committee:[1] Nesline and Dredge accepted and acted upon Borders's claims that he had the power to "fix" cases before Judge Hastings and other federal judges until early July 1981. At that point, Dredge discovered that Borders did not have the power to "fix" a continuance with Judge Hastings. Dredge, an apparent racist, promptly decided to exchange his information on Borders for a deal that would enable him to avoid prison on his pending drug indictment. In order to enhance his bargaining power, Dredge manipulated his information and events that occurred during Operation Apple Eye to persuade subordinate federal officials that Judge Hastings was involved, notwithstanding Dredge's knowledge that the judge was innocent.

---

[1] Anderson, *A Provisional and Preliminary Report on the Proceedings Against United States District Judge Alcee L. Hastings: 1981-1986* (the *"Provisional Report"*) at 24-25, 96-118. The *Provisional Report* is reproduced in Appendix III,

We asked the House subcommittee to gather evidence through which this theory might be properly developed. It declined. The FBI materials produced by the House managers in response to this committee's first order provide further support for the theory and confirm that no attempt has been made to explore or develop it. We seek to depose the following persons in order to develop it now, to the extent that remains possible, and to prepare for trial:[2]

1. William Dredge. Dredge is the central figure in this theory and is a central figure in all accounts. The

---

at 58-243, to the record of the hearings held by the House subcommittee concerning Judge Hastings.

[2] We have not sought to interview any of the persons in this category. Their interests are adverse to the judge's and their prior records make it clear that they will be reluctant witnesses at best. Frankly, we did not and do not have the necessary funds.

judge sought to have him produced as a material witness at trial; the government opposed his request; and the court denied it. Dredge was produced and coerced into testifying before the Investigating Committee, and we have received a copy of the transcript of that testimony. Dredge refused to respond to inquiries concerning his relationship with Nesline, however, and was not rigorously questioned concerning his role in the Romano scheme. The Investigating Committee concluded, even on the basis of its limited examination, that Dredge's testimony was false in material respects. Moreover, Dredge claimed that he had no recollection of certain events. We seek his deposition in order to develop lines of inquiry relevant to respondent's defense and to ascertain the matters to which he can and can be compelled now to testify to at trial.

2. Joseph Nesline. Nesline is the other major figure in Borders's scheme. In 1985, Nesline reportedly expressed his conviction that Judge Hastings was an innocent victim of a scam initiated by Borders. Nesline also reportedly claimed that Borders was communicating with Nesline from prison and that Nesline was sending Borders money in prison. Insofar as the available record reflects, neither the FBI nor the Investigating Committee made any effort to investigate these matters. Nesline was called to testify before the Investigating Committee, but refused. Insofar as the

record reflects, no effort was made to compel his testimony there.[3]

The House subcommittee did not call Nesline. The managers have provided a memorandum of an interview with Nesline's probation officer that is consistent with reports that Nesline suffers from Alzheimers disease and may no longer be competent to testify. Because he played a crucial role, we seek to depose him in order to gather and preserve any information he may be able or compelled to provide at this late stage.

3. Rebecca Sutton Nesline. Ms. Nesline is reported to be Joseph Nesline's wife. The record indicates she was present when many of Nesline's and Dredge's conversations and meetings took place. She may have been present at meetings between Nesline and Borders or other figures. Moreover, there is no indication that her memory has become impaired. Ms. Nesline was called before the Investigating Committee. She declined to testify fully, and no proceedings were instituted to compel her testimony. She was neither called nor deposed by the House subcommittee or its staff. Given Joseph Nesline's reported condition, we seek to depose Ms. Nesline to gather and preserve such information as she may be able and compelled to provide at this late stage.

4. Peter Chaconas. Chaconas is another reputed underworld figure in Washington, D.C. He was an associate of

---

[3] Nesline also refused to testify before the 1981 grand jury in Miami under a grant of immunity. He was imprisoned for about eleven months for civil contempt.

Nesline and a friend of Dredge. We understand that he had and has a relationship with Borders. Chaconas paid Dredge's hotel bill on one of Dredge's trips to Washington and later told an attorney whom Dredge had approached that Dredge would have paid the attorney up to $100,000 cash if the attorney had agreed to fix Dredge's criminal case in Baltimore. For some time, Chaconas has operated a flower store in Georgetown. Borders is presently the proprietor of a flower store in the Northeast section of the District. Chaconas has never testified or been examined in any forum insofar as we can determine.

Chaconas's deposition might be the only source of important information, given Nesline's reported condition. As things now stand, Chaconas may be the only witness with relevant knowledge concerning Borders's schemes and his relationships with Dredge and Nesline. We seek his deposition to compel his testimony so that we may obtain this information in preparation for trial.

We believe that Dredge, the Neslines, and Chaconas are the witnesses whose depositions should be assigned the highest priority in this category.[4] Quite apart from respondent's need for discovery, we believe that each may be or become a reluctant witness. By directing that they be subpoenaed now, the committee will be able to determine this and initiate procedures to compel their testimony at trial should that be necessary.

---

[4] The preliminary witness list includes witnesses with information bearing upon Dredge, the Neslines, and their roles in Borders's schemes. Some have testified before the Investigating Committee; others have never testified. The need for deposing additional witnesses in this category cannot be accurately assessed until the depositions requested here have been taken and certain of the documents we have requested have been produced.

B. FBI Officials

The recently produced FBI materials corroborate concerns raised in the *Provisional Report*. Those materials expressly indicate that at least the case agent, William Murphy, and the line Public Integrity Section Attorney, Reid Weingarten, assumed Judge Hastings's guilt and involvement from the outset and had become "dedicated to the prosecution" of the judge, as well as Borders, even before Operation Apple Eye was approved. The initial proposal submitted on September 4, 1981, specifies that the objective of the proposal for the undercover operation was to "obtain prosecutable evidence showing that a nationally prominent attorney is acting as the middleman, between a USDC Judge and individuals coming before the judge's bench, conducting criminal activities involving the soliciting of bribes." Judge Hastings, along with Borders, is listed among the "Subjects." The proposal reports that "Reid Weingarten, Attorney, Public Integrity Section, . . . concurs with the proposal and its objectives. . . . He is dedicated to the prosecution of the subjects developed. . . ."

Their superiors, at least in the FBI side, apparently did not share this blind enthusiasm. As of September 24, 1985, Director Webster and his subordinates still had only approved Operation Apple Eye insofar as it was directed against Borders and had ruled that the Director's approval would be required before it was expanded to include Judge Hastings. At that stage, the prosecuting attorneys and the FBI apparently agreed they had sufficient evidence against Borders, and it appears now that the decision to arrest Borders at the scene of the payoff was made and approved because the Director had withheld approval for letting the payoff circulate as a vehicle for targeting Judge Hastings. By that date, the FBI and the prosecuting attorneys had recognized that, even if Judge Hastings issued the order on September 30, 1981, as Borders had promised, additional evidence would be needed for the prosecution of the judge.

As of September 24, 1981, the scenario approved by the Director was contingent upon Judge Hastings's issuing the *Romano* order on September 30. Following the issuance of that order, authority to tap Borders's telephones was to be obtained. The undercover agent was then to ask Borders questions about the order to induce Borders to call Judge Hastings for clarifications. This was to be the source through which the government determined whether there was evidence sufficient to merit action with respect to Judge Hastings.

The scenario fell apart. Judge Hastings did not issue the order on September 30, 1981, and on October 5th Borders had firmly assured the undercover agent that the matter had been taken care of *before* any communications between him and the judge had been documented. The only additional information available before October 9, 1981, was the ambiguous "letters for Hemp" telephone call that came 45 minutes after Borders had given his assurances to the undercover agent.

Against this background, two further facts suggest that the post-arrest investigations were conducted by overzealous line agents and prosecuting attorneys bent, as they had been from the outset, on making a case against the judge without regard for the truth. First, there is nothing in the file to indicate what new safeguards were to be required after the scenario projected as of September 24, 1981, fell apart. More important, the massive post-arrest disclosure of information concerning the confidential informant and details of the investigation must have come from Justice Department or FBI officials, and the only apparent purposes that this disclosure could have served was to force the judge from the bench or prejudice his right to a fair trial or, most likely, both. Government officials who would engage in improper activity of this magnitude are officials who would also act improperly to manipulate witnesses and evidence to achieve their goals.

Although we believe that the evidentiary hearings would be expedited if all the FBI officials involved were deposed in light of the materials recently produced, case agent Murphy and most of the field agents have testified frequently enough in other forums to enable respondent to confront them fairly at trial in this case. In view of the committee's suggestion that we assess the need for depositions carefully, the officials whose depositions we seek in this request are limited to those officials in the FBI hierarchy whose testimony is needed to develop the foundation for evidence that supports the view that evidence was manipulated by subordinate FBI agents who conducted the investigations and whose testimony may lead to stipulations that will make it unnecessary to call some or all of them at trial.[5] They are:

1. Peter Marcoline. Agent Marcoline was the supervisory agent for Operation Apple Eye in the Washington Field Office. On October 6, 1981, three days before the arrest, he attended two meetings at which ways of forcing the reassignment of a significant case pending before Judge Hastings were discussed. Insofar as we can determine, agent Marcoline has never been called to testify or been deposed concerning his supervisory role in the investigation.

2. Anthony Amoroso. Agent Amoroso was the supervisory agent in Miami. Agent Amoroso's activities in manipulating evidence in another undercover operation, "Abscam," have been documented and criticized elsewhere. Agent Amoroso testified before the Investigating Committee about events in which he participated during the investigation. He has never been examined concerning his supervisory role. (Agent Amoroso has also been identified as one of Mayor Stephen Clark's regular golf partners and is listed as a person

---

[5] Some of these officials also exercised discretion in the investigation concerning improper wiretap information and would be examined concerning their knowledge of that matter. See below.

whose deposition is necessary concerning the allegations made in Article XVI. See below.)

3. Sean Hilly. Agent Hilly was the supervisory agent in the Criminal Investigation Division at FBI headquarters who coordinated field activities and through whom information concerning the investigation was channeled to superior officials in the hierarchy. Insofar as we can determine, agent Hilly has never been called to testify or been deposed concerning his role in Operation Apple Eye.

4. S. M. McWeeney. Agent McWeeney was apparently agent Hilly's immediate supervisor. He submitted memoranda concerning Operation Apple Eye that, after various stages of review, were submitted to the Director. Insofar as we can determine, he has never testified or been deposed.

5. Dana E. Caro. Inspector-Deputy Assistant Director Caro participated in the critical Undercover Operations Review Committee meeting at which Operation Apple Eye was reviewed and in the detailed briefing of the Director and Assistant Director Charles P. Monroe on September 10, 1981, at which the "Director and Mr. Monroe concurred with the proposal, as it impacts on Borders, and instructed that their approval be obtained prior to any contact with Judge Hastings." Insofar as we can determine, he has never testified or been deposed.

6. Charles P. Monroe. Mr. Monroe was the head of the FBI's Criminal Investigation Division. He and the Director apparently reviewed and approved the reports and proposals

concerning Operation Apple Eye that were submitted to them. In addition to the Director, Mr. Monroe can testify concerning the accuracy of the information provided and the meaning of the limitations he and/or the Director imposed. Insofar as we can determine, he has never testified or been deposed.

7. William Webster. Judge Webster was the Director of the FBI throughout the period in question. The materials provided contain his handwritten notes, questions, and instructions on memoranda concerning Operation Apple Eye. We seek to establish the extent and accuracy of the information that he was given and the genuineness and meaning of certain of his notes. Insofar as we can determine, he has never testified or been deposed.

C. Justice Department Officials

There is similar and compelling evidence that the prosecutors engaged in misconduct whose primary function can only have been to manipulate or manufacture evidence to make a prosecutable case and to enhance the prospect for a conviction. The most dramatic disclosures to date are three:

-- the decision to approve Borders's arrest at the scene of the payoff on October 9, 1981, when the conditions the prosecuting attorneys thought necessary to establish a prosecutable case had not been established;

-- the immediate improper disclosure of details of the investigation that led to disclosure of the informant's identity and forced Judge Hastings to request reassignment of cases then pending before him; and

-- the false representation to the trial court that Dredge was not a material witness. These events alone should have compelled inquiry at an earlier stage. They did not, and we seek to redress the imbalance now.

Although more compelling justifications may become available after we have received documents we have requested, we believe the record to date should be sufficient to establish respondent's need for pre-trial depositions of the following persons:

1. Steven Allen. Mr. Allen was the Assistant United States Attorney responsible for developing and prosecuting the case against Dredge. Mr. Allen participated in the plea negotiations. Public Integrity Section Attorneys Robert I. Richter and Reid Weingarten and case agent William Murphy also participated in the events and negotiations that led to Dredge's plea agreement. Mr. Allen also participated in the conferences and proceedings in which the agreement and Dredge's role were disclosed to the presiding judge, Judge Frank Kaufman. Mr. Allen testified before the Investigating Committee and in the course of his testimony disclosed that (a) he had been informed that Associate Attorney General Rudolph Guliani had promptly authorized the Public Integrity Section to take such steps as were necessary to develop the case shortly after Dredge came forward; (b) he entertained speculations that Borders might be a "rainmaker" pulling a scam; and (c) in the aftermath of the disclosures that followed Borders's arrest, Judge Kaufman had suggested that the

materials in Allen's file were of such significance that they should be preserved for future use.

None of these areas was pursued before the Investigating Committee, and the Allen file was not made part of the record. We have requested production of the Allen file and seek to depose Mr. Allen concerning his knowledge of the events that preceded and followed the plea negotiations.

2. Robert I. Richter. Mr. (now Judge) Richter was a Deputy Chief of the Public Integrity Section and was assigned to the investigation from the outset. He and Reid Weingarten were the two attorneys responsible for the investigation and prosecution throughout and he must have had a role in all significant decisions that were made. He participated in witness-preparation and served as co-counsel at trial. Mr. Richter testified before the Investigating Committee concerning matters that might provide additional evidence against Judge Hastings. Notwithstanding the information developed in the *Provisional Report* and Judge Hastings's request, the House subcommittee declined to call him to testify at its hearings. The events that call into question Mr. Richter's credibility and conduct have never been pursued. Mr. Richter has been identified as a witness in these proceedings. We seek to take his deposition to explore areas that bear upon his credibility and to establish parity of trial preparation.

3. Reid Weingarten. Mr. Weingarten was the trial attorney in the Public Integrity Section who was assigned to

the case at the outset. The FBI materials make it clear that he served as the attorney-advisor to the FBI on issues that arose throughout the investigation. Mr. Weingarten served as principal counsel throughout the trial. Mr. Weingarten testified before the Investigating Committee. The inquiries addressed to him also focused upon that committee's efforts to discover further evidence that might implicate Judge Hastings. Notwithstanding the information developed in the *Provisional Report* and Judge Hastings's request, the House subcommittee declined to call him to testify at its inquiry. We seek to depose Mr. Weingarten so that the avenues of inquiry that bear upon his credibility and the credibility of some of the government's evidence at trial may be explored in preparation for trial in this case.

4. Gerald McDowell. Mr. McDowell was the Chief of the Public Integrity Section. He must have been the primary link between the line prosecutors and the Associate Attorney General in charge of the Criminal Division. The information he communicated to those above him and the instructions he gave the line prosecutors bear upon the credibility of the investigation and of the evidence the prosecutors presented at trial. If Mr. McDowell believed or thought his superiors believed that the removal of Judge Hastings from the *Haitian* case or the *Trafficante* case was important to achieve the objectives of Justice Department policy and if he communicated those views to his subordinates, the credibility of the investigation and the evidence it produced may properly

be undermined at the trial in this case. The importance of the *Haitian* and *Trafficante* cases, the decision to arrest Borders at the scene, the subsequent leaks of information to the media, and the decision to represent to the court that Dredge was not a material witness are more than sufficient to raise questions concerning Mr. McDowell's role. Insofar as we are aware, he has never been examined concerning his role in any forum. We seek to take his deposition here so that questions that should have been asked before may now be asked here in order that respondent may properly prepare for trial.

5. Rudolph W. Guliani. Mr. Guliani was the Associate Attorney General responsible for the Criminal Division and for the Immigration and Naturalization Service in 1981, when Dredge first offered his information implicating Judge Hastings. Mr. Allen was informed that Mr. Guliani had been involved and had directed that steps be taken to make a deal with Dredge that would make it possible to pursue the investigation. It is also clear from the record that those involved were concerned that the *Trafficante* and *Haitian* cases had been assigned to Judge Hastings, given his established reputation as a judge who held strong views concerning the rights of individuals guaranteed by the Constitution. The basis for Mr. Guliani's concerns was confirmed at crucial stages during Operation Apple Eye. On September 30, 1981, Judge Hastings entered a temporary restraining order that blocked INS from implementing its policy to dispatch

Haitians without affording them access to counsel or other meaningful procedural protection. October 6, 1981, three days before the arrest, Judge Hastings entered a preliminary injunction supported by a substantial opinion, enjoining INS from implementing executive policies for dealing with the "Haitian problem."[6] Mr. Guliani's awareness and views are reflected by comments he made in a letter he sent to then-Governor Bob Graham of Florida in late October 1981: "As you are sure to understand, our ability to reduce the number of Haitians being detained has been hampered by orders from U.S. District Judge Hastings . . . ."

Any decisions or comments made by Mr. Guliani would have had a substantial affect on his subordinates and their actions. The information submitted to him and his responses bear directly upon the credibility of the actions taken by subordinate attorneys in the investigation, in trial preparation, and at trial. Mr. Guliani declined to answer questions concerning his role in the case against Judge Hastings that were posed in a deposition taken by counsel for the plaintiffs in the Haitian case, and insofar as we can determine, he has never been examined or compelled to testify concerning these issues in any forum. The House subcommittee declined to call him. We seek to depose him here to obtain the answers necessary to enable respondent to prepare for trial.

---

[6] These decisions were reported. *Louis v. Meissner*, 530 F. Supp. 924 (S.D. Fla. 1981). Following reassignment and protracted litigation, the case was ultimately decided by the Supreme Court, *sub nom. Jean v. Nelson*, 472 U.S. 846 (1985).

We have not attempted to interview any of the persons in this category for three related reasons. First, each is in a position which will require he or she be designated as an adverse or a hostile witness at trial. We do not believe there was or is any reason to expect meaningful cooperation. Second, any information provided through an interview would be difficult to use at trial and, for that reason, could not be relied upon in trial preparation. The process of impeaching a witness based upon differences between a witness's testimony at trial and what a third party - interviewer recalls that person as having said on a prior occasion is difficult at best. The process is likely to be totally ineffective when many of the decisionmakers will not hear the testimony or observe the demeanor of the witnesses. Third, time and resources: given the limitations upon the amount of lawyer or paralegal time available to the respondent and upon the absence of resources available to support travel, accommodations, and other expenses, we concluded the resources that would have to be allocated to such an effort would substantially outweigh any likely benefit.

D. Other Witnesses in this Category

As the committee noted, the Senate has not authorized discovery depositions in prior cases of impeachment. As we noted in our prior memoranda addressing the need for discovery in this case, such depositions were rendered unnecessary in prior cases of impeachment, at least in those conducted since the latter part of the last century. Throughout this period, insofar as we are aware, the House has insisted that the evidence against the accused be presented through competent witnesses at open sessions with counsel for the accused being afforded the opportunity to cross-examine those witnesses and to call witnesses to present evidence on behalf of the accused. Indeed, the House appears to have reverted to that practice in the extended and recently concluded inquiry into the conduct of convicted Judge Walter L. Nixon.

There is much that has been done to Judge Hastings that is unprecedented. Simple fairness suggests that precedents should be observed on both sides or neither -- that they should not be applied or ignored in favor of one party only. It is for that reason that we continue to believe the committee should permit Judge Hastings to depose all those who now appear on the preliminary witness lists submitted by the House managers or respondent and who have not testified at either the hearings in the House inquiry or at the 1983 trial.

Although we recognize that many of these are not adverse or hostile witnesses, in our view considerations of the resources available to respondent and the utility of depositions in preparing for trial support the view that respondent should be accorded now the rights that the House enjoyed and exercised for well over a year -- the right to use compulsory process to gather evidence and testimony in useful form. Nonetheless, in view of the committee's decision we will seek to interview persons in this category and will only seek depositions if those efforts prove unfruitful or if additional information comes to light that requires further depositions of persons in this category.

II. PERSONS WITH KNOWLEDGE RELEVANT TO ARTICLE XVI.

We shall request that the committee issue subpoenas to persons with relevant knowledge concerning the accusations made in Article XVI, the Mayor Clark disclosure accusations. Counsel has not been able to include them in this request, however, because he was forced to devote the available time to preparing the memorandum commenting on the schedule established by the committee's second order, dated April 21, 1989, by the prescribed deadline. *Respondent's Memorandum on Scheduling and Other Pending Issues* (May 10, 1989). We shall submit a supplemental request identifying persons in this category whose depositions will be necessary to a fair and orderly trial as soon as possible.

Respectfully submitted,

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

May 10, 1989

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

RECEIVED MAY 16 1989

In re	)	
	)	
	)	
IMPEACHMENT OF	)	
JUDGE ALCEE L. HASTINGS	)	

HOUSE MANAGERS' RESPONSE TO RESPONDENT'S REQUEST FOR SPECIFIC DEPOSITIONS

The House Managers do not oppose Respondent's request for depositions except to the extent that any such depositions exceed the scope of the charges contained in the Articles of Impeachment as delineated by the Impeachment Trial Committee in its April 14, 1989 order on pretrial issues. To ensure that the proper scope is maintained, the House Managers suggest that the Committee designate Senate Legal Counsel, or one of the members of his staff, to attend the depositions if one of the parties so requests. The House Managers also reserve their right to have their counsel attend and participate in any deposition authorized by the Committee.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron /RW
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant

Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

May 16, 1989

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL MCCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DEWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

May 17, 1989

RECEIVED MAY 1 9 1989

Mr. Michael Davidson
Senate Legal Counsel
642 Senate Hart Office Bldg.
Washington, D.C. 20510

Re: Hastings Impeachment

Dear Mr. Davidson:

I am writing to supplement the response of the House Managers to Respondent's request to take certain depositions. We wish to make it clear that in not opposing Respondent's request, the House Managers should not be viewed as supporting either the need or the right of Respondent to engage in such proceedings.

The Senate Committee may well decide that it does not wish to exercise its subpoena power to compel a witness to attend a pre-trial deposition, unless the Committee is satisfied that the deposition is both necessary and appropriate. Indeed, it is not clear that under the Senate Impeachment Rules such a pre-trial procedure is even authorized. That is a matter for the Senate Committee to consider.

In addition, the House Managers are in no way opposing the right of a proposed deponent to seek either a protective order or to quash a subpoena after it has been issued.

Accordingly, the House Managers, in responding to Judge Hastings' request to take depositions, are not taking a position at this time on issues which may be raised by the Senate Committee and by proposed deponents in the future.

Sincerely,

Alan I. Baron

Alan I. Baron
Special Counsel to the
House Managers

AIB:mjp

cc: Terence Anderson

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
) RECEIVED MAY 1 6 1989
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

REQUEST OF HOUSE MANAGERS FOR DEPOSITION SUBPOENAS

The House Managers hereby request the Senate to issue three subpoenas for the depositions of Marilyn Carter, Joanne Tyson Colt and Alan G. Ehrlich. The House Managers make this request in order to prepare effectively for the presentation of evidence in this impeachment case, which is scheduled to begin July 10, 1989.

The House Managers recognize that in its pretrial ruling of April 14, 1989, the Impeachment Trial Committee did not contemplate a request for deposition subpoenas from the House Managers. The House of Representatives, of course, has independent subpoena power. However, in the interest of assuring fair proceedings in this case and to avoid any delay which might be caused by objections to the exercise by the House of its independent subpoena power, the House Managers are requesting from the Committee the subpoenas necessary for the preparation of the House case.

The House Managers provide below the categories of information the Committee requested of Respondent with respect to any requests for deposition subpoenas.

1. Marilyn Carter

In 1981, Marilyn Carter was the deputy clerk assigned to

Respondent's courtroom in the Miami Division of the Southern District of Florida. Presently she works in the Clerk's Office in the same Courthouse. The House Managers understand that in 1981 Ms. Carter was responsible for handling Respondent's courtroom docket and sending out any court orders issued by Respondent. On October 6, 1981, Ms. Carter sent the Romano forfeiture order to the parties in that case, an event which is directly relevant to the bribery conspiracy charged in the Articles of Impeachment. The House Managers wish to depose Ms. Carter in order to inquire into the scheduling of the Romano case and her knowledge of the events of October 5 and 6, 1981.

Ms. Carter testified before the Federal grand jury charged with investigating Respondent's participation in the bribery conspiracy. She did not testify, however, in United States v. Hastings, in United States v. Borders or before the Eleventh Circuit Investigating Committee. The House Managers have a copy of Ms. Carter's grand jury testimony and a copy has been provided to Respondent.

In December 1988, the House of Representatives issued a subpoena in order to obtain a sworn statement from Ms. Carter. In consultation with Ms. Carter, the deposition was scheduled for December 19, 1988 in the U.S. Courthouse in Miami, Florida. Although the House Managers offered to arrange for a room in the Federal Building in Miami, Florida, at Ms. Carter's request the meeting was scheduled to take place in Respondent's chambers.

Special Counsel to the House Managers, Alan Baron, and Assistant Special Counsel Patricia Wynn traveled to Florida for the December 19, 1988 meeting. Ms. Carter appeared pursuant to the House subpoena; however, she refused to testify. Her attorney stated on the record that he believed that the House subpoena was invalid because Congress was in adjournment at the time the subpoena was issued, and he counseled Ms. Carter to that effect. The House Managers did not obtain a statement from Ms. Carter.

Based on the foregoing circumstances, the House Managers believe that Ms. Carter will not consent to an interview voluntarily. The House Managers request that the Senate issue a deposition subpoena for Ms. Carter based on their belief that Ms. Carter has information material to the charges contained in the Articles of Impeachment.

2. Joanne Tyson Colt

Joanne Tyson Colt is a former law clerk to Respondent. The House Managers understand that in October 1981 she had recently joined Respondent's staff. On October 9, 1981, she was present in Respondent's Miami chambers when FBI agents served a subpoena for courtroom records and conducted interviews of the court personnel. Ms. Colt is listed on Respondent's preliminary witness list. The House Managers wish to depose her about the events that occurred in chambers in October 1981.

Ms. Colt has not testified in any of the prior proceedings involving the charges contained in the Articles of Impeachment. The House Managers, therefore, have no prior testimony to consult.

On behalf of the House Managers, the Office of Special

Counsel recently contacted Ms. Colt to arrange an interview. In response, Ms. Colt requested that a subpoena be issued. The House Managers, therefore, file this request for a deposition subpoena.

3. Alan G. Ehrlich

Alan Ehrlich was Judge Hastings' senior law clerk in 1981. He had been hired by the judge when he assumed the bench in November of 1979. Mr. Ehrlich was familiar with procedures in Respondent's chambers in 1981, and he had conversations with Jeffery Miller, the law clerk responsible for the Romano case, concerning the Romano forfeiture order.

Mr. Ehrlich is listed on Respondent's preliminary witness list. The House Managers wish to depose him about the manner in which the chambers operated in 1981 and about his knowledge of the issues and events in the Romano case.

Mr. Ehrlich has testified previously before the Federal grand jury investigating the bribery conspiracy and in the criminal trial of Judge Hastings. He did not testify, however, in United States v. Borders or before the Eleventh Circuit Investigating Committee. Both the House Managers and Respondent have copies of Mr. Ehrlich's grand jury and trial testimony.

The Office of Special Counsel recently contacted Mr. Ehrlich to arrange an interview. Mr. Ehrlich stated that he preferred to appear in response to a subpoena. The House Managers, therefore, request a deposition subpoena for Mr. Ehrlich.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /pw
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

May 16, 1989

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE D. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Wednesday, May 17, 1989

With due notice, the committee met in closed session to deliberate upon pending pretrial and procedural matters.

The committee decided to not recommend that the full Senate grant Judge Alcee L. Hastings' motion for defense funds and that Judge Hastings may renew such a motion at the end of his trial.

The committee voted unanimously to authorize the Chair, in consultation with the Vice Chair, to rule on all pretrial matters requiring disposition, which ruling shall be distributed to each member of the committee and shall thereafter stand as the ruling of the committee, in accordance with rules XI and VII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, unless any member shall ask that a meeting be convened to consider and vote on any such matter.

The committee determined that one committee member shall constitute a quorum for the purpose of a pretrial examination of witnesses at which sworn testimony is heard and evidence taken.

Isabel T. McVeigh

Isabel T. McVeigh
Journal Clerk

COMMITTEE ACTION: THIRD ORDER

XIX. Disposition of Motion Requesting Funds for Respondent's Defense

MICHAEL DAVIDSON
COUNSEL
KEN U. BENJAMIN, JR.
MORGAN J. FRANKEL
ASSISTANT COUNSEL

PHONE: (202) 224-4435
TELECOPIER: (202) 224-3391

United States Senate
OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, DC 20510-7250

IMPEACHMENT TRIAL COMMITTEE

Disposition of Motion Requesting Funds for Respondent's Defense

Upon consideration of the submissions of the parties on Judge Hastings' Motion Requesting Funds for Respondent's Defense, the committee has authorized the chair to issue the following ruling on behalf of the committee:

The committee has determined that it will not recommend to the Senate that the Motion Requesting Funds for Respondent's Defense be granted. Judge Hastings may renew his request for defense funds at the close of the Senate's proceedings on the Articles of Impeachment.

Jeff Bingaman
Chairman

Arlen Specter
Vice Chairman

May 18, 1989

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

RESPONSE TO STIPULATIONS PROPOSED BY THE HOUSE

On April 26, 1989, respondent received materials that provide substantial corroboration for the claims he has made throughout. The Justice Department and the FBI did know from the outset that William Borders was a rainmaker who made unfounded claims that he had the power to fix cases before other judges. The prosecutors and the FBI did make false and misleading statements in their attempts to secure his conviction and, later, his impeachment. Inquiries that were generating evidence that might have exonerated Judge Hastings completely were terminated, and evidence that supported his innocence was kept out of the record and was withheld from him.

Those disclosures require that the Impeachment Trial Committee reassess the schedule it initially established and that it act now to assure that respondent is afforded time and resources to pursue the inquiries that the House should have pursued to generate evidence necessary to establish his innocence. On the record now available, concern for expedition can no longer justify the Senate's denying an acquitted Judge Hastings time and discovery powers before trial at least comparable to that which the House afforded a convicted and incarcerated Judge Nixon before impeachment. The necessary time, resources, and discovery should have been and should be allowed *before* respondent was or is required to engage in a mandatory stipulation process with the House.

Quite apart from these issues, it is clear that many of the stipulations proposed by the House managers were designed to further a strategy that could only further impede respondent's defense without serving the purposes that the Impeachment Trial Committee articulated as a rationale for adopting the House's proposed procedure. The committee's order went further than even the House asked and compounded the unfairness by indicating respondent should take a position on admissibility at this stage.

Simply stated, no party should be asked to take a position on the admissibility of a document unless the proponent of that document has (a) represented that it intends to offer that document in evidence at trial, and (b) made a proffer specifying the fact or facts of consequence to which it is or may become relevant in this litigation. Neither party should be required to engage in speculative and potentially meaningless exercises of the kind mandated by the committee's order concerning documents. Somewhat different requirements should be imposed to prevent improper use of proposed stipulations of facts. Unless apparent, the proposal should include a proffer concerning relevance. More importantly, in view of the abuses evident in the managers' current Revised Proposed Stipulation of Facts, the proponent of a proposed stipulation should be required to proffer some explanation demonstrating that the proposed stipulation will in some degree simplify and shorten the presentation of evidence at trial. The managers proposed stipulations do not satisfy any of these conditions.

We illustrate these points below in some detail so that the committee may understand the flaws in the process mandated by its order. As the committee must in any event be aware, it took an unprecedented step when it prescribed a mandatory stipulation process in its initial order. Respondent has elsewhere expressed his principled objections to any process of that kind.[1] By the present submission, he seeks only to demonstrate to the committee the unintended and improper side-effects of the specific procedures it adopted here. Assuming time and resources are available, he remains willing to participate in a proper stipulation process that is designed to narrow the issues and conserve trial time in a manner that fairly allocates the burdens to the party best able to meet them. He submits, however, that the procedures embodied in the committee's order are inconsistent with this goal and that the extraordinary precedent that order would establish requires that those procedures be re-examined with care.

---

[1]

These points are developed and illustrated below in as much specificity as is feasible at this time. In order that the record may be clear and the committee may assess these points in light of respondent's concerns, however, we begin with a summary of the necessary background.

I. INTRODUCTION

The case against respondent with respect to Articles I through XV is admittedly circumstantial. For seven years, respondent's accusers have gathered and subjected to microscopic examination a vast array of evidence concerning the events that preceded and followed Borders's arrest in 1981. From this array, those accusers have culled and organized evidence to establish a detailed account of those events which can be marshalled to establish a pattern consistent with respondent's guilt. In that context, the managers can fairly claim that the fifteen-volume Statement of Information disclosed the House's case and identified the evidence that would be offered to support it in considerable detail.

Ever since the Articles of Impeachment were exhibited in the Senate, the managers have sought a prompt and expedient trial that would establish these circumstances in detail and confine respondent to presenting such explanations as were possible at this late date. The managers accurately perceived that, if they could present a mass of detail and marshall it into a sinister mosaic pointing toward guilt, it was unlikely that respondent would be able to generate, at this late date, evidence that would undermine the detail sufficiently to destroy the essential pattern established.[2]

The managers' proposed stipulations and their request that these stipulations be treated as requests for admissions were a crucial part of this strategy. The Proposed Stipulation of Documents identifies documents culled from the mass that bore some relationship to the mosaic which the House seeks to create. By the proposals for a mandatory response procedure, the managers sought to force respondent to take a position on each before his counsel had any opportunity to examine the materials he had sought through discovery. The Proposed Stipulation of Facts (and the Revised Proposed Stipulation of Facts) went further still. Through it, the managers seek to force respondent to stipulate to events taken out of context, many of which are simply excerpts from the documents. This may advance their strategical goals, but it is not a proper use of the stipulation process.

---

[2] The managers' strategical assessment has been corroborated by one of the more sophisticated of the judge-jurors who will hear the case. As early as January 1989, Senator Mitchell, the former federal judge who now serves as Majority Leader, wrote to a concerned citizen, assuring her that "Judge Hastings will have every opportunity to *disprove* the charges brought against him" (letter dated February 15, 1989 from Senator Mitchell to Gloria Collins) (emphases supplied).

The House strategy was and is designed to prevent Judge Hastings from mounting an effective defense. There are in essence only two ways to defend against charges based upon circumstantial evidence. The first involves presenting testimony and other evidence that provides innocent explanations for the circumstances offered as evidence of guilt. The second involves presenting evidence to show affirmatively what really happened. Judge Hastings was forced to rely upon the first method at his 1983 trial because the government withheld from him material evidence necessary to enable him to present his rainmaking defense and to show that Borders was nothing more than a "rainmaker" who made unfounded claims about his power to fix judges other than Judge Hastings, claims that even the government was unwilling to take seriously. With the record of the trial and that defense before them, Judge Hastings's accusers have devoted more than five years to marshalling a more detailed presentation of the evidence and to establishing an unfavorable public perception of the accused in order to overwhelm any possibility that a similar defense might be marshalled, heard, and accepted in the political forum at this late date.

For more than seven years, however, respondent has been calling for investigations necessary to identify evidence that would show what really happened and establish his innocence. By January 1986, his counsel was able to specify the essential lines of inquiry that had to be pursued as part of this kind of investigation in considerable detail in the *Provisional Report.*[3] For more than seven years, respondent's calls have gone largely unheeded, and it now appears that his accusers acted affirmatively to obstruct or terminate investigations that promised to generate evidence establishing his innocence.[4]

It was not until April 26, 1989, that respondent's counsel first received materials confirming that Judge Hastings's claims were well-founded and demonstrating the lengths to which his accusers had gone to avoid or conceal evidence supporting those claims. The materials supplied on that date also demonstrated the need for further discovery to enable respondent to develop and prepare the line of defense that had been denied him throughout the past seven years, and his counsel promptly requested documents and depositions necessary to achieve that end.

We believe that the requirement that respondent engage in a mandatory stipulation process at this time is simply unfair. Respondent has only recently begun to receive, through discovery, materials that should have been included in the record and developed fully in the prior proceedings.

3.
4.

Respondent has not been afforded either the time or the resources necessary to enable him to do the job properly now, and under the current schedule, the work could not be completed in any event.

Moreover, the specific procedure mandated by the committee's order is unworkable. The managers Proposed Stipulation of Documents is not limited to those they intend to offer at trial, and it is clear that many cannot be offered and that the use of others will be contingent upon developments that occur at trial. Respondent cannot in any event be fairly required to take a position of the admissibility of these documents before the managers have been required to limit the proposal to documents they intend to offer and have made a proffer as to the relevance of each. In view of committee's articulated reasons for adopting a mandatory stipulation procedure, most of the facts set forth in the managers Proposed Stipulation of Facts are unnecessary and improper subjects for such a procedure.

II. THE NEED FOR TIME AND RESOURCES: QUESTIONS OF FAIRNESS THAT CAN NO LONGER BE IGNORED

A. The House Managers Hold The Advantage

1. The First Fully Funded Investigation. From July 20, 1981, until February 4, 1983, the Justice Department employed the services of at least two of its full-time employee-attorneys, and of the Federal Bureau of Investigation, to investigate and develop evidence showing that re-

spondent had been a knowing participant in one or more of Borders's corrupt schemes. For at least the first five months of that investigation, these attorneys also had and exercised the subpoena power of the grand jury to aid them in gathering evidence. It is now beyond dispute that they withheld from respondent evidence that was material to his defense. Nonetheless, they presented so much of the evidence as they thought likely to be effective and compelled respondent to present evidence in his defense at the 1983 trial, evidence that resulted in a jury verdict of acquittal.

2. The Second Fully Funded Investigation. From March 1983 until August 1986, an Investigating Committee (the "Investigating Committee") of the Judicial Council of the Eleventh Circuit (the "Council") sought to obtain evidence that would strengthen the case for respondent's involvement in Borders's 1981 schemes and that would show that the explanations respondent provided at trial were false. To accomplish this mission, the Investigating Committee retained and compensated two lawyer-investigators and authorized one of these to bill for necessary services provided by his paralegals. These investigators acquired the products of the prior FBI and grand jury investigations[5] and utilized the

---

[5]

services of the FBI to a far greater extent than even respondent had suspected.[6]

The function of that investigation was to gather and marshall evidence *against* respondent. It is now clear that the Investigating Committee went further: It affirmatively directed that inquiries that might produce evidence should not be pursued.[7] From the available evidence, the lawyer-investigators presented witnesses and documents in order to compile a record that would *support* the Investigating Committee's conclusion that respondent should be impeached.

The record so compiled did not include evidence that might have confirmed respondent's innocence. The Investigating Committee called Borders, but made no effort to enforce its subpoena when he refused to testify. The Investigating Committee called Joseph Nesline, but made no effort to enforce its subpoena when he refused to testify. The Investigating Committee persisted in this failure even after it was advised that Nesline had reported that Judge Hastings was an innocent victim of Borders's corrupt manipulations and that Nesline was still receiving letters from Borders in 1985. Indeed, the Investigating Committee advised the FBI that it was not interested in having this line of inquiry pursued. The Allen file was not included in the record, and Mr. Allen was not examined about its significance, even

---

6.
7.

though the Investigating committee's chief counsel apparently had obtained access to it as well as to the FBI and Justice Department files. Even with the support of the FBI, co-counsel, and a staff of paralegals, it took the principal lawyer-investigator more than 6200 hours to complete the task, 6200 hours for which he was paid $560,000 from public funds.[8]

3. The Third Fully Funded Investigation. From March 1987 until August 1988, the House took up the inquiry. The House Judiciary Committee retained a staff of four special counsel to aid in its work. These special counsel promptly acquired not only the record compiled by the Investigating Committee, but also voluminous other materials and work product compiled by counsel to the Investigating Committee and the FBI.[9] By May 1988, special counsel had compiled the evidence *against* Judge Hastings into a fifteen-volume Statement of Information that was later reproduced as a three-volume, 3000-page appendix to the record of the House Subcommittee hearings.[10]

The Statement of Information simply marshalled evidence in extraordinary detail that the House's special counsel thought supported the circumstantial case against respondent. It did not identify or include any information or evidence relevant to the Nesline-Dredge theory or to other factual issues supporting respondent's claim of innocence, even with respect to those issues which had been developed in the *Provisional Report*.

---

[8]

[9] [The Mayor Clark disclosures]

[10] [The Major Clark volume]

It is also now clear that the procedures established by the House subcommittee for its hearings served to conceal exculpatory evidence from Judge Hastings and to prevent him from acquiring or developing evidence in support of his defense. When the subcommittee chose to call John Doar and accept his testimony as to the thoroughness of the judicial investigation and the fairness of the resulting record, it assumed a burden of providing respondent with evidence of prior statements that were inconsistent with that testimony. Surely the materials showing that Mr. Doar instructed the FBI that the Investigating Committee did not want it to pursue Nesline's report that Judge Hastings was innocent fell into that category. So too, when supervisory agent Mazzella repeatedly assured the House subcommittee that the FBI had no leverage to induce Mayor Clark's cooperation, disclosure of the FBI telex reporting that a Justice Department prosecution of the mayor was pending in March 1986—became mandatory. None of this was done, and the witnesses through whom respondent's counsel might have generated similar information were not called.[11]

---

[11] The managers' explanations concerning this latter failure should be reassessed in light of the procedures followed in the recently completed inquiry concerning Judge Nixon. Judge Nixon was convicted of two counts of perjury and sentenced to five years imprisonment in 1986. His rights to

4. The Second Fully Funded Prosecution. In August 1988, the House designated the four special counsel and the paralegal and secretarial staff they had assembled as an impeachment trial staff to aid its managers in preparing the

---

seek direct review were exhausted by January 1988, and he entered prison shortly thereafter. An impeachment resolution was introduced in the House, and the subcommittee assigned responsibility for the conduct of that inquiry began its hearings on June 9, 1988. In response to Judge Nixon's claims of prosecutorial manipulation of the evidence, however, that House subcommittee suspended its hearings until Judge Nixon had had an opportunity to explore and develop evidence in support of his claims in post-conviction hearings before the courts. As a result, the subcommittee's hearings were not finally completed until earlier this year, and Judge Nixon was not impeached until May 1989 -- eleven months after the hearings began.

A convicted Judge Nixon has thus been allowed a substantial period and access to the discovery procedures of the federal courts to explore and develop such evidence as was available to support his claim that his conviction was obtained through improper manipulation of testimony by the prosecution *prior to impeachment*. These rights were accorded the *convicted* judge, notwithstanding the fact that he was and remains incarcerated and wholly unavailable for service in his court. The House denied these rights to an *acquitted* Judge Hastings, notwithstanding the fact that it had access to FBI materials showing that his claims had a substantial basis in fact and notwithstanding the fact that he remained an active judge carrying a full caseload throughout its inquiry.

Under the schedule established by the Impeachment Trial Committee's first two orders in this case an acquitted Judge Hastings would be forever denied the rights accorded a convicted Judge Nixon. In our view, this is not a circumstance this committee can fairly tolerate. We would also ask that the committee consider the fact that Judge Nixon was accorded those rights, notwithstanding the time necessarily required, even though he was incarcerated and thus incapable of performing any services for his court. A concern that the matter should be expeditiously tried so that Judge Hastings may return to full service or a successor be appointed may be a legitimate concern. It is not, however, a concern that could justify denying him time and discovery to develop his defense before trial equivalent to that afforded a convicted and incarcerated judge before impeachment.

case for trial and in representing the House in proceedings before the Senate. With that assistance and the record so compiled, the managers were able to generate the 19-page Schedule of Documents appended to their Proposed Stipulation of Documents and a forty-three page Proposed Stipulation of Facts, all by December 15, 1988. The bulk, form, purposes, and substance of these proposals are addressed below, but, given the resources available, the accomplishment is hardly remarkable.

What is remarkable is that the managers would make and persist in urging a mandatory stipulation process while they were withholding material necessary to enable respondent to prepare his defense. Had the managers prevailed on the latter issue, respondent might have been directed to respond before he received material confirming that his claims had been well-founded throughout. As matters now stand, the schedule requires that he respond to those proposed stipulations before his counsel has had a fair opportunity to review fully the materials recently disclosed or to pursue the discovery necessary to enable him to develop the evidence from which he could engage in the stipulation process from a position of parity. This is simply not fair, and, in light of the recent disclosures, it should now be recognized as untenable.

B. The Time Now Required To Redress The Balance Cannot Fairly Be Attributed To Any Lack of Effort by Judge Hastings

1. The First Unfunded Defense. Between October 1981 and February 1983, respondent did not seek public funds to pay for his defense. Through funds contributed to his defense and from his own pocket together with services provided by lawyers who served without receiving payment for their services, he funded the preparation of his own defense.[12] He sought, but was denied access to, evidence that was material to his defense. He asserted early in the proceedings that the government had been biased and had manipulated the evidence and events throughout, but the trial court deferred his claims until after the trial. Following the acquittal, the court found it unnecessary to hear these claims.

2. The Second Phase: Funds Denied. Promptly after the Investigating Committee was appointed in March 1983, respondent requested funds for his defense under the Federal Courts Improvement Act of 1981.[13] The Administrator of the United States Courts was advised that he could pay expenses incurred by the Investigating Committee, but not those requested by respondent, and respondent's request was denied. Over the succeeding three-and-a-half years, respondent at-

---

12. The burdens imposed upon respondent's resources in this phase were such that he asked and the trial court granted him limited *in forma pauperis* status so that he could be relieved of certain of the costs associated with the trial.
13.

tacked the constitutionality and the conduct of the Investigating Committee's proceedings in every forum that was open to him, again without support from public funds. When the Investigating Committee decided to commence its hearings in Atlanta before these challenges had been adjudicated, respondent filed his special appearance objecting to this premature exercise of jurisdiction in order to preserve his claims, but declined to otherwise participate.

As it turned out, the absence of funds would have likely precluded meaningful participation in any event. The Investigating Committee conducted hearings on twenty-eight days scattered over more than a year -- twenty-seven in Atlanta, Georgia, and one in Columbia, South Carolina. That is how long it took the attorney-investigators just to present the testimony and documents thought necessary to compile an appropriate record *against* respondent. Effective participation more than doubled the time required. Respondent did not and does not have funds to support the travel, accommodations, and other costs such an effort would have entailed.

Respondent's accusers declined to provide him with a copy of the record they had compiled, and his counsel was required to conduct such examinations as were feasible in sites approved by the Judicial Conference of the United States. Those examinations were, however, sufficient to enable his counsel to prepare the 169-page *Provisional Re-*

port[14] that identified inquiries that should have been, but were not, pursued and documents that should have been, but were not, made part of the record. The FBI materials recently produced confirm the essential accuracy of that report. The burdens of the litigation and of the examinations that produced the *Provisional Report* were borne by respondent and his counsel throughout this four-year second phase without support from public funds.

3. The Third Phase: Unfunded Still. The pattern continued throughout the year-long House inquiry. Respondent made clear at the outset that the lines of inquiry identified in the *Provisional Report* would have to be pursued if the inquiry were to be complete.[15] He sought a role for his counsel to assure that these lines were explored before any hearings were scheduled, but his requests were rebuffed.[16] And unlike the Watergate inquiry (or, indeed, any inquiry into the conduct of a political officer of the executive branch), there was no minority counsel retained to assure the inquiry was in fact complete and the resulting Statement of Information balanced and precise.[17] Instead, respondent was invited to participate in hearings after the Statement of Information had been distributed and in hearings at which

---

14.
15.
16.
17.

his counsel were forbidden to object and only grudgingly conceded rationed rights to cross-examine witnesses.[18]

The House subcommittee also placed a premium on expedition and efficiency. The subcommittee only called three of the twenty-five witnesses its managers now claim are necessary to establish the accusations made in Article I through XV. It declined to call any of the witnesses who might have enabled respondent to develop his defense to those articles, notwithstanding his persistent requests that his allegations be heard, requests dating back to 1981.[19] As a result, the record compiled and made available to respondent through August 8, 1988 included the mass of evidence that the House and its special counsel thought might be marshalled *against* him. Notwithstanding his diligent efforts, it included none of the evidence he had sought from the outset of the inquiry.

4. The Second Defense: Unfunded to Date. Early in the proceedings before the Senate, respondent identified two conditions that had to be resolved if the proceedings were to approach a level of minimal fairness. He requested discovery so that he might obtain the documents that had been withheld (as opposed to those that had been heaped upon him), and he requested funds so that his counsel might devote the time and conduct the investigations necessary to

---

[18]

[19] These procedures should be contrasted with those observed at the hearings concerning convicted Judge Nixon.

represent him adequately and to prepare for trial. Both these requests had been submitted by September 19, 1988, and both were before the Senate Committee on Rules and Administration in January 1989, when it conducted its hearings on issues that had been deferred from the 100th Congress. These issues were again deferred pending disposition of respondent's motions to dismiss and the establishment of this committee.

The proceedings that preceded the formation of this committee fully consumed the resources available to respondent throughout that period. The work required to address the issues identified by the Rules Committee, to prepare for its hearings, and to prepare and argue the motions to dismiss required almost all of the time respondent's counsel could allocate to the case during that period.

Under the schedule adopted by the committee, merely respondent's principal counsel has had to devote substantially all his available time to producing the documents required by that schedule. Prior to the present effort, these were all documents that advanced respondent's trial preparation and for that reason were assignments that counsel readily assumed. Nonetheless, the work required has left counsel with little time for work in other areas in which preparation is required.[20] Unless resources are provided and time allowed, that pattern will continue, and there will not be a trial that is fair to respondent.

---

[20] For example, respondent's counsel has had neither time nor the paralegal assistance necessary to conduct an extensive examination of documents of the kind that the stipula-

III. THE COMMITTEE ORDERS IN CONTEXT

The use of a Rule XI committee necessarily undermines the protections traditionally accorded the accused by a trial before the full Senate in at least two ways. First, the accused is deprived of the right to command the undivided attention of the Senate as a body during his trial. In a trial before the full Senate, the legislative business is suspended. The demands and distractions incident to that business are eliminated, and the attention of those Senators who are interested and of the public are focused on one thing only -- the trial that constitutes the whole of the business before the Senate. Second, it deprives the accused of the right to obtain prompt and dispositive rulings on questions of evidence or other issues that arise during the trial. In a trial that is conducted before the full Senate, the accused is assured that the record will be compiled in an orderly way and will not include the extraneous materials

---

tions proposed by the House managers were designed to require. Quite apart from the absence of discovery materials, respondent did not have the resources necessary to enable his counsel to spend the time or incur the expense that would have been necessary to do this work prior to the establishment of this committee. The need for time is illustrated by the information disclosed in respondent's most recent submissions. Since April 26, 1989, the demands on counsel's time have permitted only a hasty and partial examination of the voluminous FBI materials supplied on that date. The limited examination has produced information of sufficient importance to require that respondent be afforded time sufficient to allow his counsel to complete the job.

that would be inadmissible under the rules of evidence as "strictly applied" in prior trials of impeachments before the full Senate.[21]

The use of a Rule XI committee must also undermine the rights of the accused in other significant ways. For example, in a trial before the full Senate, the accused and more importantly the public may observe and thus hold the members accountable for their attendance and attention to the evidence as it is presented in open court. The trial is not a side-show; it is the main event.

In this context, the use of a Rule XI committee compounds the difficulties confronting an accused. Whatever the theoretical possibility, it is unlikely that any significant number of the Senators will study the evidence directly and in detail. The use of a Rule XI committee reduces and effectively eliminates the ability of the public to hold them accountable for the quantity or the quality of the study given. Moreover, the continuance of the legislative business eliminates time that would otherwise be available, and the absence of public accountability invites reliance on staff summaries and other secondary accounts.

Problems such as these require that such a committee act to assure that the record compiled replicates as closely as possible the record that would have been compiled had the case been conducted before the full Senate. They require that the parties be permitted to present evidence in an orderly sequence with the opportunity to present arguments concerning relevance and admissibility or other matters at the time the evidence is offered so that these issues may be readily understood by those who would study the record. They preclude the use of procedures, such as those common in the legislative process, under which any available later may be submitted and compiled for later examination, analysis, and review as the matter proceeds through levels of staff, subcommittee, and committee review with the chaff being culled and the essence being presented in a final committee report.

---

[21].

We understand the Senate's view that necessity dictates the use of the committee process, notwithstanding the handicaps it imposes upon the rights of an accused.[22] We submit, however, that such committees should weigh additional proposed procedural innovations carefully and should avoid those that might further undermine the protections that accused officials have traditionally enjoyed in the trial of impeachments.[23] In our view, the stipulation process prescribed, especially in light of the schedule adopted for its implementation and the views expressed concerning proper role of the rules of evidence in these proceedings, is inconsistent with this principle and with the requirements of fairness.[24]

---

[22] We also recognize that the view that the use of such a committee may generate some off-setting benefits is not without support. The enhanced responsibility imposed upon twelve members may well induce them to devote greater attention to mastering the record and the issues and thus create a class of twelve well-informed members whose views will command commensurate respect in the final deliberation.

[23] We recognize that the committee has also adopted innovations that have conferred rights upon respondent by according him significant discovery, and that it has his requests for funds and for depositions under consideration.

The managers' proposal for a mandatory stipulation process was without precedent in the history of American impeachments insofar as counsel for respondent can determine. Quite apart from concerns such a step would raise in any event,[25] the schedule adopted by the committee compounds the

---

We appreciate the steps that have been taken, but we believe they were required by the specific situation created by the procedures employed in the House. Moreover, procedures that enhance the fairness of the proceedings to the accused can hardly ever be criticized and, given the handicaps created by the use of Rule XI committees, such compensating innovations as are feasible should be liberally implemented.

With respect to the requests that are still pending -- for funds and further discovery, the committee should also recall that constitutional standards have evolved considerably since the Ritter impeachment trial in 1936. The right to appointed counsel in criminal cases, the right to publicly funded counsel in some other kinds of cases, and the right to full discovery are all innovations that have been recognized and become established in the intervening half century.

[24] We also view the committee's observation that respondent had had four-and-a-half months to review these stipulations as a gratuitous insult to his counsel. Respondent's requests for funds and discovery had been pending for more than seven months. As the committee must be aware, the demands imposed by the schedules adopted by the Rules Committee, the Senate, and this committee had fully occupied the lawyer-time that could reasonably be made available for respondent's defense, and counsel's record of production is not one that merits the criticism implicit in the committee's order.

[25] Respondent early made clear his view that the such procedure represented burden shifting of a kind that conflicts with the requirements of due process. Notwithstanding the principled grounds for objection, he subsequently made clear

concerns. That schedule would require that respondent commit himself to stipulations before his counsel had received and had an opportunity to examine the discovery which the committee has concluded is appropriate. Those decisions alone seem inconsistent with the principle that the committee should observe to assure that the use of a Rule XI committee does not impose additional and unnecessary burdens on the rights heretofore accorded respondents in impeachment trials. In light of the recent disclosures based upon production of the FBI materials, it should now be clear the schedule adopted cannot be fairly maintained in any event.

The committee's decisions to adopt the House's proposal and specify an early deadline did not, however, stand alone. The committee took a further step that even the managers had not sought. The committee's order would require respondent to also specify at this stage "why the proposed stipulation concerning each document should not be taken as true *and the particular admitted into evidence.*" (Emphasis added.) That latter requirement would impose an impossible burden and reflects a fundamental misconception of the trial process, a misconception of a kind that has largely been avoided since it infected the impeachment trial of Sir Walter Raleigh in 17__. These concerns can be more readily understood and il-

---

his willingness to engage in stipulation negotiations once he had been afforded time and discovery sufficient to enable his counsel to achieve a level of preparation comparable to that so long enjoyed by the managers.

lustrated by an analysis of the proposed stipulations in light of the committee's orders.

IV. THE PROPOSED STIPULATION OF DOCUMENTS

The documents identified in the managers' Proposed Stipulation of Documents are voluminous, far more voluminous than those reproduced in the eight volumes that constitute the printed record of the impeachment inquiry conducted by the House subcommittee. For example, it includes the twenty-nine volumes of the record in *United States v. Hastings;* the six-volume transcript from the trial in *United States v. Borders;* the twelve-volume record on appeal in *United States v. Romano;* and the twenty-eight volume transcript of the proceedings before the Investigating Committee. Historians might be pleased if documents such as these were deemed admissible and admitted by this committee so they might be collected and bound in the record of this impeachment; the government printing office would not.

The managers recognized that many of these documents would not be admissible generally. Their impeachment trial staff advised that no decision had been made concerning those which would be offered in fact or for what purpose. Accordingly, the managers' proposal called only for stipulations that would eliminate unnecessary questions concerning the authenticity and genuineness of these documents and the requirements that witnesses be called to establish foundations to show that certain of these documents fell with the business records or official reports exceptions to the hearsay rule.

Even the House managers did not venture to suggest that respondent's counsel should examine each of these documents in advance of trial to identify other objections that might compel its exclusion. This is a task that a team of evidence professors might be able to accomplish with several months intense labor; but even then the result would only be provisional. Moreover, in meetings with Senate Legal Counsel pursuant to the Senate's order,[26] special counsel for the managers and counsel for respondent quickly agreed that each side should control the order in which documentary submissions were tendered at the evidentiary hearings.

Clearly, the managers were correct in their assessment that issues concerning general admissibility could not be resolved at this stage. For example, virtually all of the transcripts of prior testimony would constitute pure hearsay to the extent they were offered to prove the truth of matters asserted on a prior occasion. Putting aside questions that may arise concerning th[illegible] that contain admissions or those that record testimony of a witness who is now unavailable, most of these transcripts will be useable, if at all, only for purposes of refreshing recollection or impeachment, and even then the extent of their use and whether they may be introduced as substantive evidence will raise difficult questions that neither the parties nor the committee could resolve in the abstract or in advance of trial.

---

[26]

This aspect of the Committee's order also reflects a fundamental misconception of the functions served by rules of evidence in adjudications. Those rules apply in cases that are tried to a judge as well as those tried to a jury. The nature of the process permits the parties to alert the judge to the improper effects that specific evidence may have at the time it is offered. Even though judges may apply the rules more liberally in deciding whether evidence should be admitted and considered, they do so with a full and timely awareness of the dangers and a sensitivity to the proper and improper use of evidence identified as problematic in the decision-making process.

For example, the transcript of the proceedings and the exhibits offered at respondent's 1983 trial will be offered as evidence at this trial. The testimony recorded on that occasion is hearsay and would not be admissible to prove the truth of the matters asserted by witnesses then. The record of that trial is, however, relevant to show (a) that the government had and exercised a full and fair opportunity to prove that respondent was a participant in Borders's 1981 scheme; (b) that respondent's testimony at that trial was false and misleading; (c) that the evidence offered then was not materially different from that offered by the managers here; and (d) that, far from being tainted, the jury's decision to acquit respondent was wholly rational and fully supported. That evidence would thus bear directly upon the weight any Senator might choose to assign that verdict in determining how the accusations made by the House should be decided in this case.

The specific purposes for which evidence such as this is offered should be specified at the time it is offered. The adverse party should be afforded an opportunity to object and to present arguments concerning limitations on its use that should be observed if it is admitted. The record should reflect these arguments and the ruling at this point. The use of a Rule XI Committee enhances the need to afford such opportunities in order that those Senators who view the tapes or study the printed record may understand the purposes for which and context in which significant documentary evidence was presented at trial.

The process prescribed in the committee's order could only create problems of this and other kinds. The magnitude and extent of some of those problems can be further illustrated in the context of the specific categories in which the House managers classified the documents in the schedule appended to their Proposed Stipulation of Documents.[27]

---

[27] The managers' Schedule of Documents contains references to pages in the Statement of Information prepared by their special counsel at which partial or complete copies of the documents are reproduced. Counsel for respondent has not construed the proposed stipulation as covering either the references or the copies to which they refer. He will insist that the original and complete document (or a copy sat-

A. Telephone Records

The House managers have specified long-distance billing records for eight subscribers for periods ranging from one to thirty-three months. (Items A.1-7 and A.9-12) In the aggregate, the sheer bulk of these records is impressive. The managers' staff have provided counsel for respondent with a marked copy of that schedule specifying whether the House is relying upon an original, a duplicate original, or a copy of these and other records identified in that schedule. Subject to an examination of the authenticating certificates for originals and duplicate originals and affidavits sufficient to establish the chain of custody for copies and to explain the absence of the originals, respondent would not anticipate challenging the genuineness of any of these telephone bills.

Respondent understands that under the business system employed by the telephone companies in the Bell System that issued most of these bills, long-distance calls were recorded and billed in units of one minute. This is a matter of some importance in this case because many of the entries the House has indicated may be relevant were recorded and billed as calls of one (1) minute. No inference could fairly be drawn from such entries other than an inference

---

isfying the essential requirements of the best evidence rule) be produced at trial and that copies of those that are admitted be included in the record of the evidence of this case.

that a connection was completed, no matter how brief. Indeed, the most probable inference would appear to be that no substantive conversation occurred and that the caller did not reach the person called. So long as the House managers are prepared to stipulate that this was the billing practice employed by those telephone companies during the periods covered by these long-distance bills, respondent is prepared to accept the fact that these records were maintained in the ordinary course of those companies' businesses.

There are two sets of documents among these items that present further problems. There are a set of long-distance billing records in the name of Howard Schlosser (item A.4) that the House managers designate as bills for the residence of William Dredge. Although such subterfuge is consistent with Dredge's background, the circumstances of this discrepancy and its significance have not been developed adequately in the records which counsel for respondent has been able to examine. (The proof necessary to establish a proper foundation should pose small difficulty, however, because Dredge now appears on the preliminary witness lists for both parties.)

Telephone bills for the nine numbers in Judge Hastings's chambers (item A.3) also create special problems. These telephones were connected to the Federal Telecommunications Systems, and the circumstances in which calls were specifically billed and the completeness of the resulting record is not adequately established in the records which counsel for respondent has been able to examine. Counsel for respondent has requested that the Council produce the "Confidential Memorandum re: Telephone System in Judge Hastings' Miami Chambers" and its counterparts for his Fort Lauderdale chambers.[28] Absent production of these memoranda or other information sufficient to enable counsel to prepare stipulations concerning the record-keeping system under which these records were maintained, respondent will require that the necessary foundation for admissibility be developed at trial.

So long as any alterations are properly accounted for, respondent would not anticipate challenging the authenticity and genuineness of the telephone logs maintained in the law offices of Cobb, Borders, and Williams (item A.8). The practice observed in maintaining these records, however, requires explanation. The House managers have included Cynthia Rogers on their preliminary list of witnesses. After Ms. Rogers has provided the testimony necessary to make these records understandable, counsel for respondent does not anticipate objecting to their admissibility on hearsay grounds.

---

[28] Items 3.e. 14 and 15 in Exhibit I appended to the Council's order dated September 25, 1987, authorizing disclosure to the House, a copy of which was appended to respondent's letter request to the Council dated April 26, 1989.

Counsel for respondent does reserve the right and does intend to object to the admission of records included in these items (A.1-12) on grounds of relevance, incompleteness, and improper prejudicial effects that substantially outweigh any probative value with respect to facts of consequence in this case. These objections will primarily concern the use of billing records for telephones to which respondent or Borders had access and to the telephone logs for Borders's law office for periods prior to September 1981. Counsel for respondent develops the bases that are likely to require such objections and the analysis likely to be advanced at trial in some detail here. The speculative essay that follows should illustrate why the committee must, in fairness, require that the proponent of a document must be required (a) to represent that it will be offered at trial and (b) proffer the purpose for which it is claimed to be relevant *before* the opposing party can fairly be called upon to specify the grounds for objecting to its admission or seeking limitations on its use as part of a mandatory stipulation process.

Although the committee's order did not require the managers to make any proffer as to the relevance of these documents, counsel for respondent anticipates that they may be offered under a claim that they would be relevant to the pattern of contacts theory advanced in the Report of the

House Judiciary Committee.[29] Their use for that purpose poses problems of a kind that are likely to permeate this case and that should cause the committee some concern.

As counsel for respondent understands the theory, the House may offer these records and records from the *Romano* case to show that, between January and August 1981, calls were placed from telephones to which Judge Hastings had access to telephones to which Borders had access on or near dates on which proceedings in the *Romano* case took place. As we understand the theory, the managers would invite the Senate to infer, with no other evidence bearing on the claim, that Judge Hastings spoke with Borders on those dates and that they spoke about the *Romano* case and a scheme to extract a bribe from the Romano brothers. Using the available long-distance records for this purpose would be impermissible for at least five related reasons.

First, it would require the Senate to make an inference upon an inference in most instances. The fact that the telephone records reflect a charge clearly supports an inference that a call was made from one number to the other. The inference from this fact to the conclusion that Judge Hastings placed the call and spoke with Borders is more problematic. Judge Hastings lived with his mother and Borders lived with his mother. For calls charged to residence telephones, there are four possible combinations, only one of which involves a contact between the judge and Borders. The problem is compounded with respect to calls between the judge's chambers and Borders's law offices. Judge Hastings was also friends with James Cobb, another former National Bar Association President, and Dudley Williams, both of whom practiced with Borders. And of course, Judge Hastings's clerks and other members of his staff had access to his chambers telephones.

---

[29]

Nonetheless, the relationships between the judge and Borders at that time and their respective positions as a member of the NBA Judicial Council and president of the NBA strengthens the basis for a second-stage inference that on most of the dates, if a telephone conversation took place, it was between these two men. The third-stage inference, however, that the topic they discussed was soliciting a bribe from the Romanos, would be tenuous at best and is significantly undermined by the fact that the relationships between the two men would have justified and required regular communication between the two on other topics throughout this period. For example, Borders was the then President of the National Bar Association, and Judge Hastings was active in the association and a prominent member of its Judicial Council. The extended chain of inferences necessary to reach this last step and apparent alternative explanations largely destroy the probative value of these records for the assumed purpose.

Second, many of the entries upon which the House Committee Report relied are clearly irrelevant. What inference can be drawn from an entry charging for a call of one minute? The most plausible inference is that the caller did *not* reach the person sought and only left a message. So too, messages from Judge Hastings reflected in the telephone logs in Borders's office support a strong inference that the two men did *not* talk. In the absence of other entries showing a longer, contemporaneous subsequent communication between these numbers, there is no basis for inferring any communication on any topic between the two men on or near that date of a one-minute entry. The fact that the House Committee Report relied upon inferences based upon such data should sufficiently establish that the admission of such data here would create an unacceptable risk of confusion and improper prejudice, even among judge-jurors as sophisticated as those who sit in the Senate. This data would have to be excluded in any event.

Third, the records compiled are incomplete. The Chesapeake and Potomac Telephone Company had a two-year record retention policy. By the time the Investigating Committee issued the necessary subpoenas for records for telephones to which Borders had access, the records for 1981 had apparently been discarded or destroyed. All that remained were those that had been gathered by the prosecutors in preparation for trial. The Southern Bell Telephone Company, in contrast, apparently had a policy of unlimited record retention, and the Investigating Committee obtained bills for telephones to which Judge Hastings had access as far back as 1979.

The resulting gaps preclude use of the early billing records for telephones to which respondent had access. In the absence of billing records covering the same periods for telephones to which Borders had access, any communications from telephones to which respondent had access would create an impression that respondent was initiating a contact when in fact he may, and on some occasions almost certainly was, responding to a call from Washington through which Borders had initiated the effort to establish contact. The probative value of the records that remain is thus reduced, and the potential for confusion and unfair prejudice is enhanced. It is simply improper to proffer records that are incomplete and one-sided as a basis from which the judge-jurors will be asked to infer a pattern of contacts and the causes of those contacts, especially when there is no corroborative evidence.

Fourth, the lapse of time increases the unfair prejudice that would result from the use of these records in this case. Complete records on both sides were available when the government conducted its initial investigation. Respondent cannot be charged with the delay that resulted in their destruction. More importantly, the lapse of almost eight years impermissibly handicaps any fair effort to reconstruct and obtain evidence concerning the true purpose and meaning of these contacts.

Fifth, the use of attenuated evidence such as this will consume needless time and expand the issues and evidence that must be considered at trial beyond any possible justification. If these records were admitted, respondent would then have to be afforded the opportunity to introduce such evidence as is available concerning the other reasons that would have required contacts during this period. The *Provisional Report*[30] demonstrated that a pattern consistent with innocence can be reconstructed from such evidence as remains, as even the House Judiciary Committee was forced to concede.[31]

These points could and will be developed if in fact the House intends to offer these records for the purpose postulated here.[32] The summary analysis presented above is of-

---

30.
31.
32. The managers' intent on this point remains unclear. The government gathered many (and could have gathered all) these records in 1981. Given the absence of independent evidence concerning contacts prior to September 10, 1981, it must have been apparent, even then, that the available evidence was insufficient to permit presentation of a "pattern of contacts" theory at trial. Respondent's counsel had assumed that the managers had recognized this when he saw the first preliminary witness list they submitted to the Rules Committee. It included no one who was competent to testify to events prior to July 1981. The subsequent addition of Messrs. Sonnett (the Romanos lawyer) and Dredge (the informant) suggests they may intend to offer evidence in support of this theory.

fered now merely to illustrate why the committee's unprecedented requirement that respondent address admissibility problems at this stage is unworkable. If those concerns are to be addressed in advance of trial, the committee must require the party seeking the stipulations to limit them to documents that will be offered at trial and to specify the purpose for which each will be offered. Then and only then can the adverse party be fairly required to identify and address the bases for objecting to its admissibility.

The remaining items in this category illustrate the same and other problems created by the unprecedented procedure the committee has adopted. The managers have, for example, included a floor plan for the ground floor of the United States Courthouse in the District of Columbia and subscriber information for a payphone located on that floor (items A. 13a and A. 13b). Respondent has no reason to question the authenticity, genuineness, or accuracy of these documents. The irrelevance and probative significance, even under the attenuated standards applied by the Investigating Committee and the House subcommittee, is not immediately apparent. Respondent reserves the right to object if and when these documents are offered in evidence.

Respondent will make no stipulations concerning the L'Enfant Hotel Hobic printout (item A. 14) or the Chesapeake and Potomac Company computer records (item A. 15). The government offered the Hobic printout at trial as evidence that

Judge Hastings had not made any long-distance calls from his hotel room on October 9, 1981. Judge Hastings was not able, on cross-examination, to explain why that record was incomplete. Nonetheless, the jury accepted his testimony as corroborated by other witnesses over the computer record. Closer examination has since revealed that the hotel's Hobic system recorded no long-distance calls from any of the hotel's 372 rooms during the crucial 76-minute period on October 9, 1981, and testimony concerning Hobic system failures and other concerns was presented to the Investigating Committee. The genuineness, accuracy, and reliability of these records are in dispute, and respondent reserves the right to object to their admissibility until a proper foundation has been established.

The remaining items in this category (items A. 16 and A. 17) are not evidence at all. They are lists prepared by respondent's accusers in contemplation of this litigation. The information they contain would only be relevant if the committee permits respondent to challenge the motives and biases of those who prepared them, and under the committee's current orders, that will not be permitted.

Counsel for respondent has presented this rather extended analysis of the telephone records identified in the managers' Proposed Stipulation of Documents simply to illustrate the nature of the difficulties that the procedures prescribed by the committee would create. He submits that the committee should reassess its procedures in this light and revise them to place the initial burdens where they belong. The managers should be required to identify the specific documents they in fact intend to offer and proffer the basis upon which they are claimed to be relevant. Then and only then can respondent be required to respond by addressing concerns that may affect the admissibility of each.

Counsel for respondent has not attempted to replicate this analysis for documents in the remaining categories. The points that follow simply identify major concerns that will have to be addressed.

B. Airline Records

The thirty-five items in this category included copies of computer-generated reservation and information records, airline tickets, and boarding passes. Some of the airline tickets have handwritten notations the origin and regularity of which cannot be readily assessed in the absence of testimony. The reservation records cannot be fathomed without extended explanation. The relevance of many of these items could only be assessed based on a specific proffer or in light of evidence that had gone before. All except those that relate to travel by Judge Hastings himself will require limiting rulings. Respondent does not intend to challenge the genuineness of records in this class. He does reserve the right to insist that evidence accounting for handwritten alterations be presented. He reserves the right to object on grounds of relevance and improper prejudicial effect and to seek appropriate limiting rulings

C. Hotel Records

Respondent does not intend to challenge the genuineness of any of these records, apart from requiring an account of the absence of originals and assurances concerning their integrity where copies are used. Because the specific record-keeping procedures employed at the L'Enfant Plaza Hotel in 1981 are in issue, he does insist that the proper foundation for records from that hotel (items C.7-C.10) be presented and subject to cross-examination. He reserves the right to object to the relevance and probative value of records other than those for his own accommodations (item C.1, C.4-C.6).

D. Tape Recordings and Transcripts

The managers have not supplied copies of the tapes identified in this category, and we understand that they only recently obtained the necessary originals for some. The procedures under which these tapes were made and copies reproduced will require explanation at trial in any event. Assuming a proper foundation is established, respondent does not intend to challenge the genuineness or authenticity of these tapes.

The relevance of many of these tapes is not apparent and, for some, the schedule of documents does not indicate whether a transcript has been prepared (i.e., items D.26-

D.54). Respondent reserves the right to object on grounds of relevance, improper effects, and hearsay.

The use of transcripts presents more difficult problems. Respondent has previously made clear his intention to object to evidence submitted through the House's linguistics expert.[33] Respondent will object to the use of his transcripts also. These (and all transcripts) represent hearsay. The use of transcripts of recordings is customarily limited at trial to that of an aid to the decision-maker. It is an essential part of the decision-making process that the judge-jurors listen to the tapes and form their own assessments of what was said and, given the tone, inflection, and content, what was intended. Transcripts reflect the translation and interpretation given by the transcriber.

The problems are rather dramatically illustrated in the records of the proceedings that led to this impeachment. The recording of the conversation between Judge Hastings and Borders concerning "letters for Hemp" (item D.13) has been viewed as central throughout. At least four "official" transcripts of that call have been prepared, each by persons knowledgeable in the procedures required. No two of these transcripts are the same. That fact alone demonstrates the dangers in the use of transcripts, especially where there is a significant possibility that the transcript will be used

---

33.

as a substitute for listening to the recorded conversation. Judge Hastings will not stipulate to the accuracy of these transcripts and reserves the right to seek their exclusion from the record or procedures that will assure that they are not improperly used.

E. Other FBI and Government Documents

Each of the documents in this category is a hearsay account prepared by law enforcement officials who intended to prosecute Judge Hastings. None would be admissible to prove the truth of any matter adverse to respondent. Under appropriate circumstances, some may be properly used to refresh recollections or impeach testimony or for purposes favorable to respondent.

Respondent does not intend to challenge the fact that these are genuine documents maintained in the FBI files. Respondent's prior submissions make clear his view of the potential defects in the investigation. These defects would permeate the records maintained during that investigation. Many of these and other FBI documents will be introduced by respondent to establish those claims. At this point, however, respondent reserves the right to object to their use for impermissible purposes. Absent a specific proffer by the managers, he is unable to respond further.

F. Court Documents and Opinions

Subject to physical examination of the item to be tendered, respondent does not intend to object on grounds of genuineness or authenticity to items in this category. Most of the voluminous material in this category will be inadmissible on grounds of relevance, lack of probative value, and hearsay. Absent identification of specific items or parts that will be proffered as evidence and a proffer as to the relevance of each, respondent cannot respond further at this time.

G. Judicial Council of the Eleventh Circuit

Transcripts of testimony identified in this category may be available for use in refreshing recollection or for impeachment at trial. Unless and until the committee reverses its ruling concerning Judge Hastings's right to challenge the motive and basis of those who conducted these investigations, the remainder will not be admissible at trial. Respondent reserves the right to object to the use or admissibility of all material in this category. Absent a specific proffer by the managers, respondent cannot respond further at this time.

H. Memoranda

Each of the documents in this category is inadmissible hearsay, and respondent reserves the right to object on that ground. Three of the memoranda (items H.5-H.7) are protected by attorney-client or work-product privileges and were unlawfully obtained in violation of the privilege or of court order or both. Respondent reserves the right to object to their use by the managers on this ground also. The remainder cannot be used at trial for any purpose other than refreshing the author's recollection or impeaching the testimony he or she gives at trial.

I. Letters

Respondent has no objection to the admission of the letters identified as items I.1 or I.6. Each of the remaining letters would constitute inadmissible hearsay if offered to prove the truth of matters asserted therein and their relevance or materiality as evidence of other matters is not apparent. Pending a specific proffer by the managers, respondent reserves the right to object on these grounds.

J. Miscellaneous

Respondent does not stipulate to the authenticity or genuineness of the document described as the "Appointment Book of William Borders" (item J.12). The claim that such a document existed was first made at the House subcommittee hearings in 1988, almost seven years after the FBI allegedly seized it. The foundation laid for the extract admitted there was inadequate, and the credibility of the source through who it was admitted, agent William Murphy, is in dispute. The document itself is hearsay and is, in any event, sufficiently ambiguous to require its exclusion in the absence of explanatory testimony. Time has not permitted counsel for respondent to determine whether the additional three boxes of documents supplied by the managers on April 24, 1988 contains a copy of the complete purported document. Respondent reserves the right to object to its admission on all grounds.

Respondent has no objection to genuineness or admission of properly certified copies of the records of the Supreme Court of South Carolina concerning the indefinite suspension of Hemphill Pride, II (items J.1-J.3); to the Invitation for Dinner Honoring William Borders (item J.9); to the MMAP Program Brochure and Floor Plan of the Hyatt Regency Hotel in Miami (items J.13 and J.14); or to the 1981 Calendar (item J.15).

The certification and Report of Proceedings by the Judicial Conference (items J.10 and J.11) and the *Impeachment Inquiry* (item J.16) are irrelevant hearsay in light of the committee ruling on the managers' motion *in limine*. To the extent transcripts included in the *Impeachment Inquiry* may be appropriately used to refresh recollection or for impeachment at trial, the unedited transcripts prepared by the certified reporters who recorded and transcribed that testimony would be required.

The remaining items require a specific proffer from the managers to enable respondent to respond fully. Jeffrey Miller is listed as a witness and can testify concerning his Personal File (item J.5), and its contents may then be used to refresh his recollection or impeach his testimony. Brian Duffy, the author of the Miami Herald article (item J.8), is listed as a witness. The article will be admissible for the non-hearsay purpose of establishing that there was a leak of confidential grand jury information. The relevance of the remaining items for any legitimate purpose and of the foregoing for any purpose other than that specified is not apparent, and respondent reserves the right to object on grounds of relevance and hearsay to their use for such purposes.

V. REVISED PROPOSED STIPULATION OF FACTS

After a trial of the magnitude of the one required here, the court typically requires the parties to submit proposed findings of fact based upon the evidence that has been admitted. At this stage, counsel for each of the parties customarily undertake to isolate pieces of evidence, articulate the inferences they purportedly establish, and marshall these in a way that supports the conclusion sought. Through such submissions, facts that are not in dispute can be identified, and those that are can be subjected to appropriate debate and scrutiny. That process aids the fact-finder.

The managers seek to reverse the process here. Their Revised Proposed Stipulations of Facts consist almost entirely of requests that respondent stipulate to *inferences* they would urge the Senate to draw from documents for which they have also sought stipulations and to extracts from those documents that they would like to isolate from their contexts and present in a manner that reinforces the conclusions they urge. This departure might have some merit if it were designed and intended to reduce the number of witnesses that might otherwise be called. It is not.

The departure is specially pernicious in the context of this case. The revised proposed stipulation of fact can serve only two purposes. They impose upon respondent the burden of debating inferences that may be drawn from the documentary record that the managers intend to offer before the offer is made and the relevance and admissibility of the document is established. Such an exercise may aid the managers in refining their strategy, but it can do little to simplify the task of the committee. Moreover, it requires counsel for respondent to divert his time to matters more appropriately done after the hearings have been completed at a time when respondent's discovery is not complete and his preparation for trial has hardly begun.

These purposes are not consistent with the reasons that the committee gave as justification for taking the unprecedented step of prescribing a mandatory stipulation process in a case of impeachment. We object to the managers' Revised Proposed Stipulation of Fact in their entirety on that ground. We request that the committee reconsider the procedure in this light.

We submit that, if the committee continues to believe such a procedure is merited, it should place the initial burden of justification where it belongs -- on the party proposing the stipulation. That party should be required to identify its basis for the proposed stipulation and specify what testimony could be avoided or documentary evidence eliminated if the stipulation were accepted. We illustrate these concerns in the following discussions of the several categories of facts employed by the managers.

A. [I] Airline Records

The managers have requested stipulations as to various airline records they claim are relevant. Respondent has, to the extent presently feasible, identified above the problems that must be addressed in order to determine the admissibility of those records. Every one of the proposed stipulations in this category is an inference drawn solely from documents the managers intend to present. They are not designed to conserve the committee's time. They are designed to impose a duplicative burden upon respondent and to foreclose objections he might otherwise make at trial.

Moreover, they include matters over which Judge Hastings has no direct knowledge and matters that would be subject to proper objection if advanced at trial. For example, the relevance of the fact that Borders took urgent steps to return to Washington on September 12, 1981 (¶¶ 61-72), to the case against Judge Hastings is not clear. The most plausible inferences are (a) that Borders had *not* met with Judge Hastings before Borders's first meeting with Rico/Romano, the undercover agent, and (b) that Borders was rushing back because Borders wanted to deliver his invitation to dine at the Fontainebleau to an unsuspecting Judge Hastings personally so that Borders could enhance and better assess the prospect that his corrupt manipulation would work.

Counsel for respondent fully recognized that the foregoing argument is better suited for a post-trial memorandum than for a response to proposed stipulations. That, however, is precisely the point. Proposed stipulations of fact should be used to avoid the need for testimony, not to propose inferences that may be drawn after trial in order to precipitate debate over their meaning.

B. [II-III] Telephone Records and Messages and Hotel Records

The proposed stipulation of facts concerning telephone records simply seeks to avoid problems of the kind discussed at some length in section IV.A. above. The proposals in this category do not seek to conserve time at trial; they simply seek to impose the managers' formulation of the inferences to be drawn in advance of trial. As such, they invite a linguistic debate that can serve no proper purpose at this stage of the case. The following illustrations should suffice to confirm the point.

Respondent has made clear here and elsewhere the concerns that may be legitimately raised about the accuracy and completeness of the records generated by the Hobic system used at the L'Enfant Plaza Hotel on October 9, 1981.[34] *No* long-distance calls were recorded from any room in the 372-room hotel during the crucial 76-minute period during which Judge Hastings learned of Borders's arrest and left the hotel to return to Miami.[35] With full knowledge of the nature of the dispute, the House suggests that respondent stipulate.

> 171. The computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 *reflect that only one call was made* from the hotel to area code 305, which is the area code for south Florida. That call was made at "22:00" (10:00 p.m.), and was placed from a room other than the one occupied by Judge Hastings.

(Emphases supplied.) The proposal concerning C & P's records is similarly flawed. Neither is fair or acceptable.

Proposals such as these simply invite linguistic debate. If such proposals might in fact significantly reduce the quantity of evidence or the time required for its presentation at trial, there might be reason to pursue the exercise. That is not a purpose that can be achieved through the stipulations proposed by the managers here. There is no proper reason or justification for a requirement that the parties engage in debates such as these stipulations would require during the pretrial phase of the case.

The managers' proposals in this category are also disingenuous in ways that should be noticed. The proposals

---

34.
35.

clearly demonstrate that the managers understand that the only inference that can be directly made from an entry on a long-distance telephone bill was that "a call . . . was placed . . ." from one telephone to the other. (See, *e.g.*, ¶¶ 36, 38.) When it suits the House's convenience, however, the form changes. Thus the managers propose that respondent stipulate:

> 247. Patricia Williams had telephoned Eleanor Golar-Williams at her home on eleven occasions between April 14, 1979 and August 2, 1981.

This is simply untenable. Eleanor Golar-Williams is and was the *former* mother-in-law of Patricia Williams. She also is and was the grandmother of Patricia Williams's daughter. Although it is highly unlikely that anyone could recall the specific calls eight years after the fact, it is probable that many, if not most, of these calls were made by the granddaughter to her grandmother. The same or similarly improper inferences are proposed throughout. (*See, in particular,* ¶¶ 269, 280, 283, 285).

These are not the kind of stipulations respondent could be fairly expected to accept. Because they duplicate matters covered by the documents and because there is no apparent connection between stipulations of this kind and conservation of time at trial, further response should not be required or pursued at this stage of the proceedings.

[Insert to be supplied.]

C. [V-IX] Court Records

"The document speaks for itself": That is the standard objection that precludes a party from offering unnecessary interpretations of matters shown by documents in evidence during evidentiary hearings. Those are matters saved for argument *after* the evidence is closed. By its proposed stipulations in these categories the House managers simply seek to avoid these established restraints and to present their interpretations of what it views as the relevant portions of the documents and invites respondent to join with them in those interpretations *before* evidentiary proceedings begin.

This is a transparent ploy to avoid well established principles of trial practice. Proposals such as this bear no relation to the evidence that will be presented at trial and can serve no proper purpose. Respondent's counsel declines the managers' invitation and does and will object to proposals of this kind.

D. [X] Geographical Information

Four of the five proposed stipulations in this category (¶¶ 182, 254, 255, 256) are among the few proper proposals for stipulations of fact included in the managers' Revised Proposed Stipulations of Fact. Respondent accepts them.

Respondent rejects the other (¶ 185) as ill-founded. The only evidence concerning the time and distance separating the L'Enfant Plaza Hotel from Baltimore-Washington Airport is the testimony of two FBI agents who made a test drive on a Friday afternoon. By their own admission, they did not, however, take the expressway adjacent to the hotel. Instead, they drove up New York Avenue. Ordinarily, the point might not be worth disputing. The chronology of events that occurred on October 9, 1981, is likely, however, to be fact of some consequence. Precision will be a matter of some importance.

E. [XI-XII] Recorded Conversations

These are probably the second most over-reaching sections in the managers' revised proposals. Respondent has previously noted the problems incident to using verbatim transcripts of recorded conversations where the recording is available and offered in evidence. (*See* section IV.D above.) The use of verbatim transcripts is ordinarily limited because they represent hearsay and reflect the transcriber's interpretative judgments. The managers would ignore those problems and take the process still further. They invite respondent to stipulate to their interpretation of the meaning and significance of these recordings in advance of trial. Respondent objects to the attempt and declines the invitation.[36]

---

36. There is a further problem that would in any event preclude consideration of proposals such as these. Respondent's counsel does not have copies of the tapes as yet, and he has been unable to review them.

F. [XIII] FBI Reports

This is the most overreaching section of the revised proposed stipulations. The managers propose that respondent stipulate to the truth of facts shown only in hearsay accounts included in reports prepared by the FBI, including reports of their dealings with William Dredge, the informant. These include facts that were wrongly withheld from respondent and were not the subject of evidence at the 1983 trial and matters about which respondent could have no direct information. The underlying reports could not be admitted to prove the truth of these facts. The use of these documents as bases for proposed stipulations would be improper in any event. Given respondent's stated and now amply justified view of the credibility of the FBI agents who participated in the investigations into his conduct, respondent's position on these proposals should not be in doubt. He objects to their submission and rejects them all.

G. [XIV] 1985 Wiretap Application and Progress Reports

H. [XV] Miscellaneous Proof

There are proposed stipulations in these categories that respondent could accept with minor modifications in language. The schedule imposed by the committee's orders has not, however, permitted his counsel to complete the reviews necessary to enable him to formulate a proper response. After the meeting scheduled for May 18, 1989, and his return from Washington, D.C., he shall complete the necessary work and submit a corrected and completed response that covers these items and other omissions indicated above.

VI. CONCLUSION

[To be added]

Respectfully submitted,

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

May 17, 1989

XXI. PRETRIAL CONFERENCE WITH THE PARTIES

United States Senate
WASHINGTON, DC 20510

AGENDA

CONFERENCE WITH COUNSEL
Thursday, May 18, 1989

1. Discussion of procedures for conduct of this and future conferences.

   a. Presence of court reporter.

   b. Authority of chair and vice chair to decide pretrial procedural matters.

2. Disposition of matters currently under advisement.

   a. Judge Hastings' Motion for defense funds.

3. Pending pretrial issues.

   a. Stipulations as to documents and facts.

   b. Depositions.

   c. Other discovery.

4. Discussion of conduct of the evidentiary proceedings from July 10, 1989 through August 4, 1989.

   a. Bifurcation of the proceedings between the bribery/perjury articles (Articles I - XV, and XVII(1)-(3)) and the wiretap disclosure articles (Articles XVI, XVII(4)).

   b. House proposal for dividing available hours between the House and Judge Hastings.

   c. House proposal for use of prior testimony in lieu of live testimony before the Committee.

5. Miscellaneous issues.

   a. Immunity proceedings.

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

THURSDAY, MAY 18, 1989

U.S. Senate,
Impeachment Trial Committee,
Washington, DC.

The committee met, in closed conference with counsel, pursuant to notice, at 4:36 p.m., in Room S–146, Capitol, Hon. Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman (chairman) and Arlen Specter (vice chairman); Representatives John Bryant and George W. Gekas, House managers; Michael Davidson, Senate Legal Counsel; Elaine W. Stone and Mark Klugheit, counsel to the committee; Alan I. Baron, House special counsel; and Terence J. Anderson, counsel for Judge Hastings.

Also present: Anthony L. Harvey, administrator; P. Casey McGannon, staff assistant; and Isabel McVeigh, staff assistant.

The Chairman. You folks have busy schedules, so let's start. Senator Specter will be here quickly.

Did you have a copy of the agenda for the others, too?

Ms. Stone. Yes.

The Chairman. And they have all seen that?

Mr. Anderson. This is the agenda I have.

The Chairman. Does everyone have one? If not, there is one here.

OK. This is closed, right?

Mr. Davidson. Yes, sir.

The Chairman. Does that mean anybody has been excluded or not?

Mr. Davidson. Only counsel, House staff, other Senate staff, no members of the press.

The Chairman. OK. We have no press here, right?

Mr. Davidson. Right.

The Chairman. We also have a court reporter. We also have an order that we entered yesterday—I do not know if we have it in written form—to give Senator Specter and myself some additional authority to rule over procedural matters, and I just say that to advise counsel that the committee did that and so many of the procedural things that come up we will be disposing of and advising the committee, and unless they overrule us, we will go with our decision.

The motion for defense funds, we ruled on and you have both been advised of that ruling, and that is in writing here, and we distributed it.

The questions which are of a pretrial nature, we have here stipulations as to documents and facts, depositions and other discovery. Maybe what we should do is just to go through those in order and get people's response to them.

Now, on stipulations as to documents and facts, I gather there were some pleadings filed just today, right?

Mr. ANDERSON. Correct.

The CHAIRMAN. I have not had a chance to see those. Let me just ask counsel for the House or the House managers to describe your understanding of where we are on stipulations as to documents and facts.

Mr. BRYANT. Mr. Chairman, with regard to stipulations and facts, the Senate rule adopted April 14th stated that the House motions for stipulation of facts would have to be responded to by the respondent by yesterday, or they would be deemed admitted. There was no response, and we therefore urge the committee to deem them as admitted.

With regard to documents, once again the order was to respond to our proposed stipulation of the genuineness or the business-record nature of the documents by yesterday. There was no response and we urge the Senate to just deem them as having been acknowledged as genuine and, respectively, depending upon the document, as being business records and therefore an exception to the hearsay rule.

To give you the complete story, there was a response filed today of a sort. It did not respond to each of the stipulations of facts, either objecting to them or agreeing to them. It was, instead, sort of a general statement with regard to the disinclination of the respondent to go along with the general idea, and the same is true with regard to documents.

We find that to be clearly absolutely ignoring the Senate's order and slowing down the process and, in fact, if the Senate intends to apply the rule as it was adopted, the House position with regards to facts and documents is strictly construed with being approved.

The CHAIRMAN. OK.

Mr. Anderson, do you have a position as to where we are on stipulations as to documents?

Mr. ANDERSON. My position is substantially set out in the 56-page response that I filed. My understanding has been throughout that we apply the Supreme Court rules and file them by mail, so I FAXED it up this morning and brought it.

I think my position in every paper has been that this is simply imposing too heavy a burden on Judge Hastings, without paid staff. I understand your desires to get this done and get it done in three weeks, get it done this summer, but I don't think it can be done. I think yesterday's decision makes the situation worse.

I try to devote 50 hours a week to this thing every week. I got my 50 in this week, getting this document out. Unlike Representative Bryant, there aren't a lot in this room sitting with me. Senator, that is my position.

My position on the stipulation of the documents and some of the problems there, there are specific illustrations and responses in that document, and I will stand on that position.

The CHAIRMAN. Let me just ask if it is your view that some additional time would help you to more specifically respond to their requests on documents, the facility of documents and facts, or are you just not in a position to give further response?

Mr. ANDERSON. This is a partial document and, as I said, it has some fillers, it will not get much over sixty pages. It is a very substantial response.

Just so you understand, as I read the Senate's order, you want me not only on documents to respond as to whether they are genuine, but you also want me to address admissibility concerns, and I think that puts the cart before the horse.

It is my understanding, and I may be corrected, but from discussion with staff, they do not intend to offer all of these in evidence. I think both of us would agree that certain of them cannot be admitted in evidence. For me to shoot in the dark and take from each document what would be useful in evidence and how, and then what objection—one of my objections is, if I am going to respond to the documents, there ought to be a proffer identifying that the House to offer this in evidence and their proffer as to relevance, then I can safely respond and say I do or I do not agree it is genuine, and I can say I think here are the evidentiary points that need to be considered before it comes in. I have given a lot of illustrations in here of the kinds of things that could be done, but I am shooting in a barrel.

The CHAIRMAN. I have not had a chance to read your pleadings——

Mr. ANDERSON. I understand that.

The CHAIRMAN [continuing]. But putting aside your point on admissibility—and I think there is some validity to that, but the point that you need to know for what purpose it is offered and what kinds of issues—on authenticity of documents, is there a more complete response you can give us on the authenticity, any objections you have as to the authenticity documents?

Mr. ANDERSON. Yes, I think I have indicated throughout this that I am aware that there will have to be some looking at certificates and everything, but except for about five or ten of those documents, I do not anticipate a challenge on authenticity. I want to see it in its real form, I want to be sure it is there. There are a lot of airplane tickets that have handwritten notations on them and I would want an accounting of where those came from and what the theory was. But in general, do I anticipate challenging the Southern Bell Telephone records, if they are certified as to a true and correct copy of Southern Bell Telephone records, no.

The CHAIRMAN. What about as to the facts that are proposed for stipulation, what is your thought there, again putting aside the question of admissibility?

Mr. ANDERSON. My thoughts are two-fold, Senator. I had understood the purpose of stipulation was to try and narrow the issues and consider the trial time for the committee. Almost all of the proposed stipulations in their present form are statements of inferences the House would like to draw from documents. It is duplicitous, in the sense that if you are going to introduce an airplane record to show that Party A got in an airplane in this State and went to B and C, why the stipulation that Party A got in an airplane is a matter? It is duplicative, and it is not going to save any trial time, whether they are going to put in the document or they are not going to put it in.

I view the House's proposed stipulations as almost entirely matters suitable for proposed trial, proposed findings of fact or something. There are linguistic problems in some of them which I have at least identified by way of illustration. There are relatively few—and on those I have tried to deal substantively, which is what I thought was a proper stipulation and which I accepted, was the geographic distances between two points in the country. I could look at a map and say we don't need a witness to prove that.

You have introduced all of these long-distance telephone records and then try and put interpretive stipulations on what their meaning is. If you are going to introduce the record, let's wait until the trial to argue about what is there. I just found that, frankly, and I gave illustrations in this. I don't think that kind of stipulation—my counterproposal was that it ought to be, if you are going to have stipulations of fact, is to proffer, one, as to what the fact is and why it is relevant, and, second, how on earth a stipulation as to this fact could conserve time. Are we cutting out a witness or are we cutting out a document? What are we doing?

If pretrial stipulations, as I understood the order, was to be a process that would conserve time, fair enough; I will try and address those. If it is simply an early way to try and get me to commit myself on what inferences the House would draw to the evidence, let's wait until after the trial and we both write briefs.

Mr. BRYANT. Mr. Chairman, could I respond to that?

The CHAIRMAN. Yes, please. I do think, particularly the point on requested stipulations of fact, we should want to know what witness could be avoided or how it would speed the trial to go ahead and stipulate on the particular matter. I would be interested in your thoughts on that.

Mr. BRYANT. Let me say initially that his characterization of the proposed stipulations of facts is just completely wrong, to put it generously and without interpreting any ill-will on his part or purposeful misrepresentation. However, anyone who would look at these would have to wonder how he could make that statement.

Second, his——

The CHAIRMAN. Wrong in what sense?

Mr. BRYANT. If you simply look at the stipulations of facts, you can see that he is wrong. They are just as clean as they can be. There are no inferences and no innuendo.

The CHAIRMAN. OK.

Mr. BRYANT. And they are available for Senate counsel to look at.

Second, his complaint today is simply an attempt to delay. This complaint should have been raised as soon as he received the facts, the proposed stipulations of facts, if indeed these are legitimate concerns.

Third, he complains about time. Mr. Chairman, today we received this 56-page document here which he said he spent 50 hours on. He could have spent his 50 hours objecting to or agreeing to the proposed stipulations of facts of documents, or pointing out why he should not be forced to make a decision either way.

I want to finally emphasize that we did not move that he be forced to stipulation as to admissibility of anything, only that he be required to stipulate or object to the stipulation of facts and genuineness of documents and their business-record nature. At the time of trial, he could object to admissibility. It is very clear in our motion that that be the case.

The CHAIRMAN. You also think it is clear, ones you have already filed with the committee, you think it is clear as to how all of the facts you are requesting him to stipulate on are required as part of your case-in-chief?

Mr. BRYANT. Let me let Alan Baron respond to that.

Mr. BARON. Senator, we called out—I mean this is one just picked out of the hat—we called out facts that we felt did not involve inferences or nuances. These were hard, cold facts which, if you didn't get a stipulation, would require somebody to come in and testify about. For example——

The CHAIRMAN. You cannot put on your case-in-chief without proving each of the facts that you request stipulation on?

Mr. BARON. Yes, we didn't do these for fun. We did these because we felt this would eliminate the need for a witness to prove it, but it is part of the overall evidentiary narrative that we presented to the Senate committee, to the Senate.

In 1981, William Borders was an attorney practicing in Washington, DC, that is a fact. That is not an inference; that is not a nuance; that is a fact, but it is an important fact, (a) that he was an attorney, and (b) that he was practicing in Washington, DC. Do I have to bring someone on from the bar association to produce the record of the fact that he is an attorney or was an attorney in 1981 in Washington, DC? Those are the kind of things we are talking about here, and to characterize these as inferences, I think that Mr. Anderson is relying on the fact that perhaps he would not have a chance to look at them because if you look at them, you could not reasonably characterize them that way.

To say that it will not save time to have someone simply read that sentence into the record or indeed just put it in the record on a piece of paper, rather than swearing in a witness from the bar association to testify to it, I think reflects somebody who does not know how the cases are tried.

Mr. ANDERSON. Mr. Chairman, may I respond?

The CHAIRMAN. Surely.

Mr. ANDERSON. Mr. Baron has quite correctly identified something that could be stipulated to, and I will so stipulate to it, since we have a reporter here.

Let me now try a counter-illustration, which are the bulk of these proposed stipulations of facts. Paragraph 171 is a computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel, on October 9, reflects that only one call was made from the hotel to area (305), which is the area code for south Florida, and that call was made at 2200, 10:00 p.m., and it was placed from a room other than the one occupied by Judge Hastings.

In point of fact, first, in the stipulation of documents, are the HOBIC printout cards for the entire day. The reason why this is an objectionable inference, as I have argued from the provisional report on, is that there is a crucial 76-minute period, the exact period which Judge Hastings would have learned that Mr. Borders had been arrested, until the time he left the hotel, in which no long-distance call was made from any room in the 372-room hotel. A stipulation that suggests these records reflect only one call suggests they are accurate.

It will save no time in the pretrial process to engage in that debate. They are going to put the records in. They know what my problem has been with that, if they read the provisional report. The thing was delivered to the Senate and to the House on January 17, 1987. It is not a secret. And the bulk of these, if you look at the categories in their proposals, telephone records are stipulations of fact. Hotel records, they want the records and they want the stipulations.

Let me give you another illustration: Paragraph 247, Patricia Williams had telephoned Eleanor Golar-Williams at her home on 11 occasions between April 14 and August 2, 1981. The other stipulations in this category indicate that the managers are perfectly aware that the only inference you can draw from the long-distance billing records is that a call was made from one telephone from another and a connection was established. That's it, you don't know who talked. In this particular case, Eleanor Golar-Williams is Patricia Williams' former mother-in-law.

The VICE CHAIRMAN. Excuse me. What number are you on?

Mr. ANDERSON. On 247; it is under telephone records.

Ms. Williams lives with her daughter, who happens to be her former mother-in-law's granddaughter. They would like me to move from the fact that there may well have been 11 occasions on which a call was completed from the number assigned to Ms. Williams' residence to the number assigned to her former mother-in-law's residence, but I am not stipulating that 11 calls were made by Patricia Williams, rather than her granddaughter.

This is a debate which is not a pretrial debate. Whatever is there is shown in the document, and I will deal with the document, but don't deal with it twice, and I don't know what witnesses that is going to save the House managers if they are going to put the darned document in anyway.

The CHAIRMAN. Well, I think you have identified some areas which certainly an argument can be made that this should not be stipulated.

I guess my more general question is are we able, if additional time is granted by the committee, are we able to go through each of the items there and sort out which ones are objectionable and which ones are in fact factual and have no inference.

Mr. ANDERSON. My answer to you is I think on this set, with respect to the documentary ones, it is not productive. My suggestion in this memorandum is that with a proposed stipulation, there ought to be a proffer, not only as to relevance, but primarily as to what witness will this save, what time will this save the committee. Especially in conservation of time, my going back and checking every proposed stipulation as to a phone call to see whether that is simply a derivative from a telephone record to which I am willing to stipulate to, or whether there is some testimony somewhere down the line, that is a matter for post-trial. It is not a matter for pretrial. If you are going to put the telephone in anyway, then why do I need to address what inferences or characterizations they want?

There is a whole category of court records that they want stipulation, where they list out quotations from Judge Hastings' testimony. I am fully cognizant that the record in *United States* v. *Hastings* is likely to become evidence in here. I would offer it, if the managers did not. The transcript of Judge Hastings' testimony will be there. Why I should now sit down and engage in the proofreading, or why I should respond when the managers seek simply to do their post-trial argument.

As to how these excerpts in the transcript should be juxtaposed to make their case, that is something one does after a trial, as I understand it, rather than before.

The CHAIRMAN. Let me ask Senator Specter if he has other questions on the issue of stipulations as to documents and facts. I guess I would be inclined to go on to the issue of depositions here, but if you want to ask any questions, we will certainly do that.

The VICE CHAIRMAN. Well, if the committee is going to rule on each one of these matters, we are going to go through a very long process, and it would be my hope, as in any litigation matter, that counsel, House managers and counsel for the Respondent, would address them one by one and reserve for our decision those which cannot be reconciled.

Mr. GEKAS. May I say something? That is what I thought we were completing as of today, and therefore we are just doubling the effort, doubling the time and delaying that much farther this whole thing.

We were trying to establish before your subcommittee, as it were, your panel representing the committee, a timetable by which each one of these could be resolved, and we thought today had come the time when you would make a decision or that the committee, on your recommendation, would make a decision on each one of these stipulations.

What you are asking for now, Senator Specter, we thought the time had arrived to decide.

The VICE CHAIRMAN. Well, perhaps it has. If so, we are going to have to go through these one by one and rule on them. But as I understand the state of the record, there has been a request for stipulations and there has been—I have not examined the document I don't know if you gentlemen have, but we have had three illustrations so far where it is probable that the two sides would come to an agreement without a ruling, and I would think it appropriate that that spadework, Congressman Gekas, be done before the committee has to rule on it.

Where you have the example of the testimony of Judge Hastings, Mr. Anderson has in effect said we agree with that, so the excerpts you want may come in. He just doesn't want to proofread them, so we will look at them at the time you offer them, but you don't have to have that authenticated with any witness.

Mr. BRYANT. Mr. Chairman, let me get this into context. These proposed stipulations were submitted last December. This was not a few weeks ago, last December. It was in April that the Senate adopted our proposed rule that he be required to look at these and accept them or strike off the ones he didn't like and we would argue about those. Today was the day in which he—yesterday was the day in which he was to have submitted to us his objections to whichever stipulations he did not want to see agreed to.

Instead, on this serious scheduling matter, he submitted a 50-page compilation of narrative——

The CHAIRMAN. Let me just ask, what is the serious scheduling matter in the sense that if an additional week or an additional ten days were granted to further respond to your requested stipulations, how does that disadvantage you at all?

Mr. BRYANT. As long as the July 10th trial date is not affected, we don't have any objection to it.

Mr. GEKAS. That's right, that's the corollary to it.

The CHAIRMAN. You are not suggesting that the trial date would be affected, but is there any prejudice that you see if additional time granted? We are not granting it at this point, but I am just saying if it were.

Mr. BRYANT. We don't feel there is any prejudice to our case. Our only fear is that there is a pattern here of continually trying to find ways to suggest that he doesn't have enough time. He has had these things now for 5 months and, instead of working on them—if you look in this 50-page document that was filed today, there is a general narrative that rambles all over the place, where this much time could have been used checking off these stipulations.

Mr. GEKAS. Senator, may I suggest or may I inquire, if the two Senators here are inclined to extend this period, is it implicit——

The CHAIRMAN. We have not said that.

Mr. GEKAS. No, but I say should you be inclined to extend this period, will you encompass it in an order that will say that once and for all the stipulations that we offer will either be accepted or rejected by the defense, and then the remainder would have to be ruled on by the committee? In other words, if they accept them, it is over with; if they reject them, then the committee would have to rule on whether or not they can be part of the stipulation or not.

Mr. BRYANT. That is what is in the order at the present time.

Mr. GEKAS. Yes. So, what I am saying is we are sending this whole thing, not just changes.

Mr. BARON. Senator, could I make one observation?

The CHAIRMAN. Yes, go right ahead.

Mr. BARON. I will represent in good-faith to you that if we don't have satisfactory and good faith, or if it is not a good faith, then a hard-nosed ruling on these stipulations, the time for this trial is going to be extended thirty to forty percent.

I will also say that, from what I am hearing from Mr. Anderson, I don't think he really understands what we are doing when we propose a stipulation. For example, his point about the records, the HOBIC records, and he says the proposal was it shows 35 calls within a given period of time. I don't have it exactly in front of me, but that was it. It is indisputable that that is precisely what the record shows.

Now, he might make a counter-stipulation, there is a 60 minute or 70 minute period which doesn't show any calls. Fine. We have called upon him, you have called upon him to make a counter-proposal of fact. Now, the fact that he wants to argue what that all means, that is argument and nobody is asking him to stipulate to that. The fact is that it is indisputable, the HOBIC records are exactly what we have proposed to be stipulated.

Mr. **Gekas**. The very words we used in there reflect that these records reflect only one call.

Mr. **Bryant**. That is what they showed.

Mr. **Gekas**. That is what they showed.

Mr. **Bryant**. Now, he wants to argue that, as a result of that, well, maybe the HOBIC system was broken—Fine, he can argue it, but the fact is that is what the records show, and that is all we are asking him to stipulate to.

Mr. **Gekas**. The word "reflect" here does not mean that they infer that. It means if you read them, that is what they say.

Mr. **Bryant**. That is what they say. This gentleman knows that as well.

The **Chairman**. Let me just interrupt.

Arlen, did you want to continue with your questions on this stipulation thing? I am ready to go to depositions.

Mr. **Anderson**. I would like the opportunity to reply.

The **Chairman**. Go right ahead.

Mr. **Anderson**. I realize that they have three lawyers at the table and I am only one, but I would like at least a quarter of the time.

The **Chairman**. Go right ahead. Go right ahead. You are entitled to half and I think you have been getting half.

Mr. **Anderson**. All right. I am not really complaining.

One, I still do not know why we should be engaged in what the HOBIC records say or where it is saving trial time, if the HOBIC records are coming into evidence. After the trial, they may argue that they reflect whatever they want, and I may argue that they don't reflect the truth.

The **Vice Chairman**. What records are you talking about, Mr. Anderson?

Mr. **Anderson**. There is a printout, I think 88 in number, which purport to be the long-distance records from the L'Enfant Plaza Hotel for the date of October 9, 1981. They are serially numbered. They have all been introduced at Judge Hastings' trial; they are in the stipulated documents all to be introduced here. There is a witness on the list to qualify them because there are problems with them.

In addition to requesting a stipulation on the documents, they are now requesting a stipulation as to what the documents mean. you are going to put the witness on, if you are going to put the documents in, I am not quite sure why I am engaged now in a semantic debate over what the documents mean. We will do that and argue, and the committee and the Senate will ultimately have to decide what the inference is to be drawn from those documents are in context.

The **Vice Chairman**. Is there any objection to the Committee's considering in evidence all of the matters which were in evidence at trial?

Mr. **Anderson**. It depends on for what purpose. It is all hearsay. You certainly can consider it—I expect to offer the entire trial record, so that those Senators who do think that a jury verdict may be entitled to weight, have some comparison about is there anything new here.

The VICE CHAIRMAN. Well, would it simplify the decision on these documents to say that we will admit into evidence the entire trial record? It seems to me that the parties have been present. There has been an adjudication as to admissibility in the course of the trial that would provide a basis for putting that all in the record, so that we need not hear any additional witness on any of those factual matters.

Mr. ANDERSON. Senator, I think that Agent Murphy was a principal witness at that trial, as I tried to make clear in my most recent submission, as I have gotten a few materials out of the FBI files that I think Agent Murphy needs to give us a new accounting on. So, I think the record can certainly go it but it is going to go in to show you that Agent Murphy said something on day one——

The VICE CHAIRMAN. If you wish to call an additional witness to amplify what is in the record, I can understand that. But if we take the entire record as admissible so that none of the factual matters in the record have to be authenticated by additional witnesses, then that would simplify a great deal, would it not, in that the House managers understandably do not want to call witnesses to authenticate telephone records, for example, or admission to the bar——

Mr. BARON. I may, Senator Specter, some of that took place at the trial. A lot of the documentary authentication took place at the Investigating Committee investigation conducted by the Eleventh Circuit. There was a tremendous amount of documentation that came in that process.

Now, they did have witnesses who were questioned about the source of the documents and how they were kept, et cetera, in order to authenticate them. After all, the questioning was being done by five judges——

The VICE CHAIRMAN. So, you have the trial, number one, and then you have the proceedings before the judicial panel——

Mr. BARON. The APS.

The VICE CHAIRMAN. All right. Now, is there any objection to considering all of the materials before the investigating panel?

Mr. ANDERSON. Yes, sir.

The VICE CHAIRMAN. Why?

Mr. ANDERSON. One, because of what I think are valid reasons: we filed a special appearance, and we were not there; it is rank hearsay. It comes in, most of it misleading, and you, the committee, have——

The VICE CHAIRMAN. The respondent was not represented by counsel?

Mr. ANDERSON. No, he was not present nor represented by counsel.

Mr. BARON. He was——

The VICE CHAIRMAN. Wait a minute. I am just trying to get the facts as to what happened there.

Mr. ANDERSON. The facts of what happened, the complaint was filed on March 17, 1983; the committee was appointed on April 15th, there was some litigation over grand jury records at this point——

The **Vice Chairman**. The respondent was not present or represented?

Mr. **Anderson**. The respondent was not present and filed a special appearance challenging the jurisdiction, special limited appearance defending his litigation. But independently of that, if you put that—I think it goes counter to the committee's ruling on the motion *in limine,* that I can't challenge the motive and bias of that investigation. I don't think you can do it both ways. You can't take what they produced and then not let me challenge their motive in producing it. So, if you are going to put that record in, I think you have to reopen the issue of was the product of that investigation sufficiently biased or the credibility of the result is undermined.

Mr. **Bryant**. Mr. Chairman, this is so complicated, and I have been through this confusion before, and I know exactly what you are going through, listening to all these various investigative levels.

The Investigating Committee level was carried out by a group of objective people who were trying to determine whether or not they ought to proceed with this matter. It was not a trial. John Doar is the one who carried out this investigation.

They were invited to be present and specifically walked away and refused to participate in that proceeding. Now, if you think it is important that the whole story be told to you—I think it is important to go back to it, because I think it would simplify this entire matter.

The reason why the April 14th order was adopted by the Senate was it was going to require him to say we agree or we don't agree with the following stipulations. His characterization, for example, of the HOBIC record at the hotel is just completely false. All that Stipulation No. 171 says is that the record shows the following. He is trying to make you think that we are urging you to adopt——

The **Vice Chairman**. Mr. Anderson, is there any objection to having the committee consider all of the hotel records, without having a witness from the hotel authenticate them?

Mr. **Anderson**. I have agreed that all hotel records, except those from the L'Enfant Plaza Hotel, may be considered without witnesses.

The **Vice Chairman**. All right.

Mr. **Anderson**. The L'Enfant Plaza is a breakout.

The **Vice Chairman**. So, every stipulation which looks for the records from all hotels but the L'Enfant Plaza are——

Mr. **Gekas**. How many are there?

The **Vice Chairman**. What's that?

Mr. **Gekas**. How many are there?

Mr. **Anderson**. Quite a few, and I reserve the right to——

The **Vice Chairman**. What is the problem with the L'Enfant Plaza records?

Mr. **Anderson**. The problem with the L'Enfant Plaza records is there is conflicting testimony which was not developed about what were the odds of the HOBIC printer going down, and what happens when that happens; could there be a 76-minute gap of the system that was working correctly. It was a matter of enough concern that there is a telephone computer specialist on the managers' witness list.

The other problem is, again, distinguish, if you would, Senator, between stipulations as to authenticity of documents and stipulations as to facts based on those documents. If we are going to address the question of does the document come in, I am not clear on why I should—although I understand the insistence—why I should devote what is actually scarce time engaging in a process of whether—Mr. Bryant may be right or may be wrong—but why the sophisticated debate over the meaning of those records in a pretrial stage? That ain't going to save no witnesses.

Mr. Bryant. That is not correct, Mr. Chairman.

The Chairman. Let me just see if I can sort of cut through this. I think it would be useful, we have, what, 378 proposed stipulations that you came up with. We have none from respondent at this point, as I understand it.

I think it may be useful—and we are not deciding this now, but it is something we can discuss and put in an order if we decide to do it—it may be useful to have counsel sit with the counsel for the committee to go through the 378 and identify those that there is a legitimate complaint about and those that there is no legitimate complaint about, and in that way sort it out.

Mr. Freeman. Senator, are you aware——

The Chairman. I am aware of our order, and I am telling you that we may be changing the order and we may not. I am just throwing out that possibility, because I am anxious that we not have this same bickering back and forth for a three- or four-week period in the middle of July here because you people cannot talk to each other.

Mr. Anderson. It is difficult.

Mr. Bryant. Mr. Chairman, I must object to that. There is no question about——

The Chairman. Just a second. Calm down. Let me just tell you, there is very little cooperation between counsel in this case. You think it is all his fault; they think it is your fault.

Mr. Bryant. I just reject that tone, Mr. Chairman. That is not correct.

The Chairman. It is pretty obvious, when we have these meetings, that there is very little cooperation, and I think that we need some way to facilitate communication between counsel where you can both sit at the same table and either agree or disagree, item by item, and I think that has got to be perhaps accomplished by the committee counsel.

Mr. Anderson. Mr. Chairman, before you issue a rise order, such as your instinct, if you would—there are some procedural suggestions and problems identified in here—if you would read or review this response——

The Chairman. We will do that.

Mr. Anderson [continuing]. So at least you are aware of my concerns as they bear upon the stipulation problem.

The Chairman. We will read all pleadings before we make any judgment as to what to do and whether to change any of the previous orders.

Mr. Bryant. Mr. Chairman, with regard to the issue of cooperativeness, regardless of your ruling on this, I must say that he is not the only gentleman with time limitations. I have got another job besides this as well. We have submitted these things way in advance, it was very clear what his job was under the rule of the Senate. We have been completely available. We have had no problems communicating whatsoever. We simply object to the position that he takes today, in which he wants to argue about the admissibility of these facts. We are not arguing admissibility, we are arguing should they be stipulated to or not. He can argue about the admissibility at trial.

We have had no trouble communicating when he has been willing to call us. There is no bad blood that I am aware of.

The **Chairman**. I think we have discussed this long enough.

Mr. **Anderson**. I recognize that Mr. Bryant——

The **Chairman**. OK, go ahead, one last rebuttal and then we are going to another subject.

Mr. **Anderson** [continuing]. Bryant is as busy as I am, he has a staff, as I count in this room, of ten, and I don't have a staff of ten.

The **Chairman**. I understand. We understand the limitations that you have as far as staff and resources.

Arlen, did you want to go through any more on these stipulations or should we go on to depositions?

The **Vice Chairman**. Well, let's go on to the depositions, with leave to reexamine stipulations later, depending upon what the clock shows. We may run into the trial date. [Laughter.]

The **Chairman**. I think that is good.

Depositions: The House has not identified anybody at this time that the House managers wish to——

Mr. **Davidson**. Three.

The **Chairman**. Three. Who are the three?

Mr. **Bryant**. The three that the House has asked to depose are Marilyn Carter, who is the former deputy clerk; Joanne Tyson Colt, a former law clerk; and Alan Ehrlich, a former law clerk. In each case, we have attempted to obtain the cooperation of these witnesses, they have all three refused to cooperate unless they are first served with a subpoena, and so we have asked that if the Senate does order depositions—and we are not suggesting that you should or that you have any obligation to—that you also allow us to take the three depositions that I just referred to.

I want to point out that, with regard to the depositions that the respondent has asked the Senate to order, he has not made any effort to get them to cooperate without depositions, insofar as we know, which is in almost every proceeding the preliminary requirement before you go and get a court order to insist upon it. That is our position.

The **Vice Chairman**. On your last point, Congressman Bryant, when you talk about getting a court order for a deposition, I have a question as to that. If you are in a criminal case, there is no deposition; if you are in a civil case, you can notice a deposition, if somebody refuses to come forward, you make a motion under Rule 34 or whatever to compel attendance, you can issue a subpoena in a civil proceeding by getting the form from the clerk and the judge does not have to do anything.

As a threshold question, is there any authority that anyone knows of to have depositions in impeachment proceedings?

Mr. **Bryant**. There is no authority for him to insist and he has no right to be granted the right to take a deposition, nor do we. Your response to what I said about the need to talk to witnesses ahead of time——

The **Vice Chairman**. I am inclined to agree with you, as a threshold matter, if you want a court order, if you want a Committee order, that there ought to be a showing of necessity. I agree with that as a generalization.

Mr. **Bryant**. Let me also say, we are not urging the Senate either to grant them or not grant them. We are pointing out that there is no authority to insist upon them. If you choose to grant them, very well, we would like to have our three granted as well, is all I am saying.

The **Vice Chairman**. Why don't we talk about our three, so we know a little bit more about them.

The **Chairman**. Yes. The question I have with it is what you are saying is you can present your case-in-chief and put your case on without deposing these people.

Mr. **Bryant**. We would not like to.

Mr. **Baron**. We could call them as witnesses.

The **Chairman**. You would plan to call them as witnesses or you would not plan to call them as witnesses?

Mr. **Baron**. Part of that judgment is made after you know what they are going to say. I mean you don't usually throw a witness on the stand blindly and then wonder what they are going to say when you ask the questions. So, what we wanted to do was to take the deposition and find out what their testimony was.

The **Chairman**. You are not really requesting us to grant a subpoena so you can depose them, you are saying if we grant other subpoenas, then you would like to have subpoenas granted to these three. I guess that leaves me unsure about whether you really need these people to prove your case or you don't need these people.

Mr. **Baron**. I think our position is, Senator, that as we read the rules, the impeachment rules, we didn't find anything in there that clearly authorized a pretrial deposition of a witness. It just is not in there. There is one reference, I recall, to taking the deposition of a witness, but it seems to be a reference in the course of the trial, the actual trial itself. So, we weren't certain whether there was any authority on which the Senate could base the issuance of such a subpoena.

The **Vice Chairman**. Do you need these witnesses to prove your case-in-chief, is what I think the chairman is asking.

Mr. **Baron**. My response to that is I am not certain. One of the witnesses, Marilyn Carter, I think could be a very important witness. I can't tell for sure, because she will not talk to us.

The **Vice Chairman**. What would you expect her to testify to?

Mr. **Baron**. Marilyn Carter, I believe, was Judge Hastings' Deputy Clerk, and when she was interviewed by the FBI, she said that on the critical day of October 6th, Judge Hastings had everybody stay very late and that she ended up sending out a critical order returning a portion of the forfeited property. At Judge Hastings' direction everybody had to stay late to get that out, and she ended up sending it out special delivery, and all of this is in the context of Mr. Rico calling Mr. Borders to say where is the order that, in effect, was bribed for from Judge Hastings. So, the fact that the Judge had the staff late, the fact that she sent it out special delivery, which is a very odd thing to do for what is supposed to be a routine court order, set in the context of the urging of the person who is paying the bribe saying where is the court order, where is the court order, we think is a pretty significant piece of testimony.

I tried to take Marilyn Carter's deposition long ago, when the House was conducting its investigation. She had counsel, Mr. Anderson showed up, and that is when she refused to talk to me, she refused to testify. We would love to take her deposition.

The **Vice Chairman**. One more question. Why was the House subpoena not pursued?

Mr. **Baron**. We had a subpoena, we went down to Florida, she had counsel who refused to let her testify, claiming that the subpoena was invalid.

The **Vice Chairman**. Why was it not pursued with a contempt citation?

Mr. **Baron**. We decided we were going to bring it up here, I was not going to fight it down there. Frankly, if this body does not issue a subpoena, what we contemplated was reissuing the House subpoena. The House still has subpoena power and we were going to do it again, but then we decided to defer to the Senate, in view of the fact that we were into this proceeding.

The **Vice Chairman**. You did not pursue the House subpoena with a contempt process, because you intended to subpoena her up here?

Mr. **Baron**. Yes, to bring her up here. I did not want to get into a battle down in the courthouse in Florida, there was nowhere to go. The process whereby the House holds somebody in contempt—first of all, the House does not have civil contempt power.

The **Vice Chairman**. I know.

Mr. **Baron**. So, what it would have involved is referral to the Department of Justice.

The **Vice Chairman**. Have the House vote it——

Mr. **Baron**. And then refer it to the Department of Justice.

The **Vice Chairman** [continuing]. And then go to court to enforce it.

Mr. **Baron**. Not only enforce it, then we might even have to refer it to the Department of Justice for criminal contempt proceedings. I mean, the process was so cumbersome and so unwieldy, that it made no sense. The Senate, on the other hand, does have civil contempt power.

Mr. **Anderson**. May I respond?

The **Chairman**. Mr. Anderson.

Mr. **Anderson**. Three points: First, I agree completely with Mr. Baron that you don't put a witness on the stand without having the opportunity to examine them before. The House has had the subpoena power to examine its witnesses. I have submitted a modest list, it does not cover all the witnesses, but I agree with Mr. Baron completely, that is the function of a deposition, it is the point of the function I seek.

Second, Marilyn Carter did testify before a grand jury in 1981 in Miami and repudiated the FBI 302 statement as inaccurate and gave a different version.

Third, Marilyn Carter was not called by the Investigating Committee during its three-and-a-half years, was not called by the House during its one-year inquiry. The reason why she objected to the subpoena, as I understand it, is the subpoena was issued after the articles of impeachment had been exhibited in the Senate. I think I have made clear my view that it is improper to continue to use the powers of a grand jury after the indictment has been filed.

The first attempt to reach Ms. Carter that I am aware of occurred, I believe, either in December or January of 1988 or 1989. That is my understanding of the Marilyn Carter matter.

The VICE CHAIRMAN. May we go on to the next one?

The CHAIRMAN. Let me just ask a couple more questions on this.

You did not list her as a witness in the previous list of witnesses that you submitted to us?

Mr. BARON. I do not think so. We were not prepared to——

The CHAIRMAN. Why was that?

Mr. BARON. Because we were not sure what she was going to say.

The CHAIRMAN. But you are still not, and you have her down on your list now.

Mr. BARON. Well, if we have got a trial date and we are not going to move the trial date and there are going to be depositions authorized and it does not affect the schedule of the trial, our view was why not take the depositions of these three witnesses, it may bear some fruit. It is not going to inconvenience the Senate in any way.

Mr. GEKAS. We must make clear, at least I would like to make clear that we think we can make the case, and we did, without that testimony. But the crucial point to which this lady would testify has been entered in the record and conclusions and findings were made based on the fact that an order was issued on that date. So, in answer to that previous question, do we make out the case without that lady, the answer is yes.

The CHAIRMAN. OK.

The VICE CHAIRMAN. Congressman Gekas, are you suggesting that some of what she said was incorporated through the prior record, subsequent to——

Mr. GEKAS. No. What I am saying is that the crucial fact that is important to the managers' case here is that an order was issued which shows that what was promised by Borders to deliver to the people with whom he had conspired was actually executed. The lady would give additional testimony as to that. I do not want the Senators to infer from everything we said that we cannot make out our case without that lady.

The VICE CHAIRMAN. OK.

The CHAIRMAN. What about the second witness? I do not have the list——

Mr. BARON. Joanne Tyson Colt, she is a former law clerk and I believe she was present at the time that they went into Judge Hastings' chambers—when I say they, I mean the FBI—went into the chambers and interviewed some of his personnel. Since Judge Hastings has on occasion alluded to alleged misconduct in the course of that, we wanted to talk to her about what her testimony was about what she observed.

One, she has never previously testified; and, number two, she appears on Judge Hastings' witness list.

The **Chairman**. And not on ours?

Mr. **Baron**. Correct. I want to find out what she is going to say. That is part of my pretrial preparation. I do not like to be surprised.

Mr. **Anderson**. I would love to examine everyone on their witness list as part of my pretrial preparation, especially since I have not had the prior opportunity, which they have. I think they are factually inaccurate, although I do not have the records with me. I think Ms. Colt did testify before the Investigating Committee.

The **Chairman**. But since she was one of your witnesses, I presume you would not object to having her deposed?

Mr. **Anderson**. If I were extended the reciprocal privilege of examining every one on their witness list, I would fall all over myself.

The **Vice Chairman**. Do you have any idea as to what she will testify to?

Mr. **Anderson**. I am not sure how much will be relevant, Senator. I do know that——

The **Vice Chairman**. I am not asking you about relevancy. Do you know what she will say?

Mr. **Anderson**. I have a pretty good idea. She did testify before the Investigating Committee, is my pretty clear recollection, and we have a transcript of that.

The **Vice Chairman**. What we are trying to figure out here, gentlemen, is how important these people are, because there will be committee involvement, there will be committee involvement in a number of directions. One is the time it will take to have the depositions taken, probably a Senator will be present, and then we are going to be to subpoena—each one of these witnesses will be included, we will impose a process, so what we want to do is find out how important they are. That is what I am trying to get a sense of, and I think the chairman, too.

Mr. **Bryant**. We would urge you to just follow procedure of having counsel or a neutral third party here to pay to keep within the scope of the deposition, and I think——

The **Vice Chairman**. We may do that. When we considered this yesterday, there was considerable sentiment on the committee to have a Senator present, because of our concern that there be a Senate presence. The Constitution calls for a Senator when we have a committee, we do not have a Senator—that is what we are thinking about, and we are trying to structure something which is reasonable, but to have as much of a Senate presence as we can. So, we want to see how important they are.

How about number three?

The **Chairman**. Yes, what about number three? Again, this is one I guess Judge Hastings listed as a witness, and you did not.

Mr. **Baron**. Again, since he is being listed as a witness and we do not want to be surprised by his testimony, we were going to depose him about facts that Judge Hastings says he is going to testify to. We did not want to be surprised. I mean that is one of the normal reasons to take depositions, is to find out what the witness has to say, sometimes precisely because we do not know. Since he is listed as a potential witness, we thought it was important to talk to him.

The VICE CHAIRMAN. Hasn't he testified before at Judge Hastings' criminal trial?

Mr. BARON. I believe he testified at Judge Hastings' criminal trial, and if that is all he is going to testify to, if that is the only reason that he was put on Judge Hastings' witness list, fine, but if he is going to go beyond that, we did not want to be surprised at the trial.

The CHAIRMAN. Mr. Anderson?

Mr. ANDERSON. I like the principle that the House is advancing here. They want to examine witnesses they haven't examined on our witness list, I want reciprocal fairness for the Judge. I have not had the subpoena power for the past seven years, I have not been able to call in people I would like to talk to who are not going to cooperate. In fact, I haven't had the funds to travel around the country knocking on doors. So, my only view is I think you should grant the House their depositions, but I want to expand my list to include those persons, most of the people on their witness list who I have not had a chance to prepare for trial.

I think Mr. Baron is dead right, no lawyer in his right mind would go into trial without having deposed the witnesses to prepare for their testimony. My problem is they had their own power, until they filed their articles of impeachment—we disagree about whether they have it still, but I didn't, and they didn't want to call my witnesses.

The CHAIRMAN. It does seem, though, that you have had criminal trials here and you have had a proceeding before the Judicial Conference, you have got a lot of testimony by most of these people. Most of these are not new names. It seems that that should give you some inclination of what you expect to face when you get into the trial.

Mr. ANDERSON. I don't have any transcript, but they do, Senator, and I agree with you. The problem is that most of them——

The CHAIRMAN. You don't have the transcript from the criminal trial?

Mr. ANDERSON. Oh, I have the transcript of the criminal trial, but I am saying the problem is I am now the transcript. They have everything I have, at least, every transcript, and yet—you know, Mr. Ehrlich has testified; Ms. Carter testified before the grand jury; Ms. Tyson Colt, as I understand it, testified before the Investigating Committee, and they quite correctly want to examine, and I quite correctly—I realize I have the transcripts of what people said at other times under examination by counsel who were adverse to Judge Hastings——

The VICE CHAIRMAN. Well, has Colt testified before the Investigating Committee?

Mr. BARON. I believe the answer to that is no.

Mr. ANDERSON. I believe it is yes, Senator, but I don't want to make the representation. I think that point is——

The VICE CHAIRMAN. Well, who can tell us that?

Mr. **Baron**. She asserted a privilege, and she refused to testify on the grounds that, since she was one of the Judge's personnel, that there was some sort of judicial privilege which eliminated that.

The **Vice Chairman**. That is an important fact, at least in my mind. If someone has testified before, I would be disinclined to use compulsory process on her.

Mr. **Baron**. Let me clarify. She was called to testify as a witness before the Investigating Committee, but she declined on the grounds I indicated, that there was a judicial privilege which precluded that. They went to court, that is, the Investigating Committee went to court and got a ruling in effect saying that she should testify, among a whole bunch of people, including, I believe, Ehrlich and a couple of other people.

The Investigating Committee did not pursue her particular testimony. It did take testimony from some of the people who were asserting that privilege and those transcripts do exist, but they never ended up having heard her testimony.

The **Vice Chairman**. Mr. Chairman, I am ready to listen to Mr. Anderson.

The **Chairman**. OK. Let's go through your list. You have—why don't we take them as a group and take the first group first. You have got four witnesses who you suggest are your highest priority witnesses to prove the theory or to develop the theory that Borders was essentially promising something he could not deliver, as I understand it.

Mr. **Anderson**. Yes, sir. I think I probably want to do priority within categories, rather than saying that one category is—I think these are of special importance, because I think the Senate may anticipate that they will be reluctant witnesses and perhaps assert privileges, and I had understood from earlier conversations that where we identified witnesses who might assert a Fifth Amendment or other bar, that there might be some reason to get them in early just to find out about that.

The **Chairman**. Could we make any headway in determining whether you are going to call Borders? You continue to say that you reserve the right to call Borders. I don't know exactly what that means.

Mr. **Anderson**. Senator, my understanding is that his life might be in jeopardy if we called him. If I find out that that information is not there through other sources——

The **Chairman**. How do you find that out?

Mr. **Anderson**. Frankly, I call former presidents and National Bar Association people and communicate with them and try and find out what the best reading I can get it.

The **Vice Chairman**. Well, what is the basis of your asserting that his life may be in danger?

Mr. **Anderson**. John Doar's testimony, among other things. His counsel——

The **Vice Chairman**. What does he——

Mr. **Anderson**. John Doar testified before the House that Mr. Doar is now the proprietor of a flower store in Washington. Peter Chaconas, whom I understand is reputed to be a major underworld figure, is also the proprietor of a flower store in Washington. The Nesline records indicate that Borders remained in communication with Mr. Nesline. I don't know whether a disbarred lawyer in a flower store would not have been the natural assumptions of the business they would have gone into.

My view—and I cannot prove it—is that Mr. Borders is being taken care of by a group who would be unlikely to testify against Nesline. If he did testify against him, his life might very well be in jeopardy.

The VICE CHAIRMAN. Being taken care of by a group, is that related to Judge Hastings in any way?

Mr. ANDERSON. He is being taken care of by underworld figures. It bears upon whether he is likely to come forward. I cannot prove that, but I can't tell you every information I have on John Doar.

The VICE CHAIRMAN. When do you expect to know whether you would press to have Borders appear as a witness?

Mr. ANDERSON. Senator Specter, if Mr. Borders called me on the last day of trial and said, "Gee, I'm ready to come forward," I would know it then. If he walked in the door of the room and said he was ready just before you recessed, I would ask you to extend your time to hear the man out.

The VICE CHAIRMAN. OK. But you don't have any specific plan now——

Mr. ANDERSON. I have no specific plan of action.

The VICE CHAIRMAN [continuing]. To do anything to find out about any questionable facts to determine whether or not Borders should be called?

Mr. ANDERSON. In part, these depositions may give me—number one, they may reduce it as a necessity, if Mr. Nesline's memory came back to the point where it existed apparently in 1985.

The VICE CHAIRMAN. What is the position of the House with respect to calling Borders?

Mr. BRYANT. We think we should follow a witness list. We are not going to call him, but we think he should be required to file a witness list before trial, unless he shows cause, he should not be able to depart from the witness list.

The VICE CHAIRMAN. Why are you not interested in calling him?

Mr. BRYANT. We called him and he refused to testify. We called him before the House.

The VICE CHAIRMAN. Have you tried to use compulsory process?

Mr. BARON. He was subpoenaed before the subcommittee, and he declined to testify and we elected——

The VICE CHAIRMAN. On self-incrimination?

Mr. BARON. About eight different amendments to the Constitution, some of which I really could not tell you what they were. The Fifth was in there, but there were a lot of others.

The VICE CHAIRMAN. Did he use any beyond the first ten? [Laughter.]

Mr. BARON. I think he stopped about eight. It was a blur of numbers, but I know five was in there.

The CHAIRMAN. Did he also refuse to testify at the criminal proceeding?

Mr. BARON. Yes, and he went to jail for that.

The CHAIRMAN. And served 30 days in jail for that refusal?

Mr. BARON. Correct. Again, we made the judgment, and we laid this out in some detail in the committee report. Number one, because the House process, if someone declines to testify, is so cumbersome and really just doesn't work very well, in effect meant handing Borders over to the Justice Department and——

The **Vice Chairman**. What is the difference between your process in the House and ours in the Senate?

Mr. **Baron**. Because the Senate, as I understand it, has the power of civil contempt, the House does not, you can, as I understand it, have somebody put in the poky——

The **Vice Chairman**. What is the basis for that distinction?

Mr. **Baron**. You have the statute that authorizes you to do it and the House doesn't. I think Mr. Davidson will bear me out on that.

The **Vice Chairman**. Is that so?

Mr. **Davidson**. The Senate passed a bill which would have provided for a civil enforcement procedure for both Houses, and the House opted out in conference, and so it was——

The **Vice Chairman**. OK. So, now there is a process for civil contempt in the Senate, so why don't the House managers want to use that to compel Borders to come forward?

Mr. **Baron**. We made the judgment then, among many other reasons, that (a) his testimony was likely to be so incredible that it was so silly that we didn't think anybody would want to rely on his testimony in any event, and——

The **Vice Chairman**. Wouldn't you be interested to hear it before you come to that conclusion.

Mr. **Bryant**. Let me give you a better answer. I sat as a judge on this matter for a very long time, as did Mr. Gekas, and all of us unanimously believe there is an overwhelming case against Judge Hastings, without fiddling around with the contempt difficulties that Borders might present us. We did try to get him to testify, as other forums did as well, but at some point you stop trying to get him up here.

If he is going to call him, we would simply like to know ahead of time.

Mr. **Baron**. There is one other observation: We would not like—well, we would urge that we not be put in the position that, in the middle of the trial, all of a sudden Borders is then called as a witness, asserts a privilege and you then have to spend the next 30 days in some sort of hiatus while——

The **Vice Chairman**. I agree, and there has been a discussion on the committee, but speaking for myself, I would like to hear him because he is a central witness, the central witness——

Mr. **Baron**. We would love to cross-examine him, in all candor.

The **Vice Chairman**. Then the issue—I do not know if we start now, it is practical to compel his testimony by the time this proceeding concludes, but my own instinct is to try, unless there is some very compelling evidence presented to the contrary.

The **Chairman**. Mr. Anderson, do you see a reason that the committee should not proceed to compel his testimony at a deposition at this point?

Mr. **Anderson**. Mr. Chairman, I don't see any reason why the investigating committee did not try to compel it when he refused to testify before them, I didn't see any reason why the House didn't simply avert, and I don't want to assume, given what my view is of the potential risk to him, so no.

The Vice Chairman. Mr. Anderson, witnesses are subjected to threats very frequently in all sorts of proceedings. It happens all the time. Many victims in criminal cases assert that all the time, and prosecuting attorneys subpoena them and make them testify.

Mr. Anderson. Senator, you are quite right, prosecuting attorneys do, but I must say——

The Vice Chairman. The court may *sua sponte* and the committee——

Mr. Anderson. I am posing no objection to that.

Let me just raise one point that has come out frequently: Let me declare, I think I am among those who have examined the most data on this, and I will simply now declare, although I would have thought it improper, I am absolutely convinced that Judge Hastings is innocent, having looked at this.

The prosecutors have continued to say they have sat as judges, and they made a judgment and they presented it. I understood it was improper for counsel to characterize their personal views, but since it has been made of record by Representative Bryant to the full Senate, and today on the record, let me declare that it is my personal belief that I am representing a man who is innocent and is, if I am correct, the victim of one of the most extraordinary sets of intervening fraudulent problems of any person who has gone down in history.

The Vice Chairman. The committee understands your views and we will give them both appropriate weight.

The Chairman. As I understand it, the way we are leaving the Borders issue is the House has no objection to the committee proceeding, Mr. Anderson has no objection to the committee proceeding to compel testimony from Mr. Borders, and I guess all are agreed that if we did that, it would be appropriate to do so at a deposition, first and foremost, to determine whether there was any need to call him as a witness.

Does anybody want to object to that characterization?

The Vice Chairman. Only, Mr. Chairman, if we have to start the process all over again with a second subpoena. Maybe we will do them both at the same time and then have them available.

Mr. Baron. Could I raise one more question about the idea of producing him for a deposition. Who is going to depose him?

The Vice Chairman. The committee will.

Mr. Baron. I just wanted to know whether I should be ready.

The Vice Chairman. We have some questions.

The Chairman. Let's ask about the other. You have got four others who are proposed as witnesses that would corroborate the testimony you would hope that Borders would give, as I understand it.

Mr. Anderson. Yes, sir. And let me, in all candor, say that one problem is that Joseph Nesline has never testified anywhere. There is a memorandum from a member of the House impeachment staff, which my own information is correct, he has Alzheimer's disease. I want to get whatever I can. His wife would be a poor substitute, but she may know something. And then there is Mr. Dredge himself who is the other person who probably knows everything.

Mr. Davidson. Is Dredge now a witness on your list?

Mr. Baron. He is a witness on both parties' lists.

The Vice Chairman. Who is that?

Mr. Baron. Mr. Dredge.

The Chairman. Have you interviewed Dredge?

Mr. Baron. Yes.

The Chairman. And you have not?

Mr. Anderson. Mr. Dredge is running his own witness protection program and is not available. Judge Hastings, you will recall, this is the witness where he made desperate attempts to find him before trial, he filed a motion to have the trial call him as a material witness, the prosecutors at trial represented that he was not a material witness and he was not called. It turned out that he was produced for the Investigating Committee and ever since he has been viewed by the Investigating Committee of the House and Judge Hastings as an extraordinarily material witness.

The Chairman. What is the House's position? Why is he on your witness list?

Mr. Baron. We anticipate calling him as a witness to testify as to his dealings with Borders, certain representations made to him by Borders. He sort of picks up the early stages of the conspiracy. We would note that there is well over one-hundred pages of questioning of Dredge under oath that was elicited before the Investigating Committee, so this is not a witness no one has never heard what he has to say.

The Chairman. Do you have that transcript?

Mr. Anderson. I do, indeed.

The Vice Chairman. It is an assertion made that he was not rigorously questioned at that time?

Mr. Anderson. Well, let me give you an illustration, Senator.

The Vice Chairman. Well, answer my question first.

Mr. Anderson. Yes, the assertion was—not only not rigorously, but he was leading the questions. He knew three facts at the outset. He professed to a certain lack of recollection. He knew that he met Borders for the first time between the date the sealed indictment was filed and the date he was arrested in Miami, on April 29th, and he was finally indicted on May 10th. It is in the Investigating Committee's report that sometime prior to April he met him. Now, that was a set of hypotheticals in the afternoon session, where Mr. Doar said, "Well, now, if we had evidence that this had happened in April, then you would have to have met Borders before, wouldn't you," and Dredge said, "I guess so, I don't know." But that has become hard evidence now in the view of those who want to set the timetable, that he likely met him before April.

The direct testimony, in non-leading form, would affix somewhere between April 29th and May 10th the first telephone contact with Borders is in that period, the first airline flight to visit is in that period, but I am dealing with committee reports, from both the Investigating Committee and the House, who say, gee, it is sometime in April.

The Vice Chairman. Is there a statement, does the House have a statement from him aside from this questioning?

Mr. Baron. I interviewed Dredge in New York——

The Vice Chairman. I take it the answer is yes?

Mr. Baron. I have a brief statement, about three pages, it is not a statement by him, it is adopted, it is my notes of an interview with him that is about three pages long.

The Vice Chairman. That is all you have, besides these one-hundred pages?

Mr. Baron. That is correct.

The Vice Chairman. Has there been any consideration to make that that available to Mr. Anderson?

Mr. Baron. I would have to look at it to see whether it has. What I would characterize as my personal observations, the work product in it, but other than that, I think I would be prepared to let Mr. Anderson——

The Vice Chairman. Well, I don't know that that is a—I am just wondering if that would obviate the request, but I am confident that it would not.

Mr. Baron. If I may, there is a serious question about Dredges' safety. There is no question but that Dredge went to the authorities and told them that Santo Trafficante—and it would have included about nine or ten other major mob figures—were involved in a conspiracy with Borders and Judge Hastings, to pay off Judge Hastings in that case. That is undisputed, and Dredge is in serious fear for his life. He is essentially living in hiding, and he feels that he can protect himself better than the witness protection program, and he may well be right.

To subject him to unnecessary exposure——

The Vice Chairman. You oppose?

Mr. Baron. No, I am just raising the problem. It is not really for us to oppose it in that sense. He is not my client and he may have his own feelings. I am just simply pointing out that Dredge does have serious concerns for his personal safety which he expressed to me at great length.

The Vice Chairman. Is there any likelihood that he will not be a witness at trial?

Mr. Baron. No, I don't think so.

The Vice Chairman. Will the deposition materially reduce the time he will testify at trial?

Mr. Anderson. I think it may very well, Senator. Let me tell you what happened before the Investigating Committee. The——

The Vice Chairman. I ask that, because if he is going to testify at trial anyhow and it is not going to materially shorten it, why do it twice.

Mr. Anderson. Well, I am not—he signed his plea bargain, including an express representation by the government, that he would never be called in any form, his voice would never be recorded, he would never be called in any form to testify concerning the matters of this investigation. There were some incidental recordings of his voice. He was not called before the grand jury. He was not called in Judge Hastings' trial. He was produced for the Investigating Committee, and there is about twenty pages—I don't know how long it does on, but what I find is an interesting colloquy between Chief Judge Godboldt and the Investigating Committee and Mr. Dredge, the opening line of which is, "Sir, would you raise your hand and take the oath?" and his response is, "No, sir, I don't think I will," and he argued vociferously there that his agreement with the government meant it was an agreement with the government that he never had to testify.

That was overridden, and he testified only when Judge Godboldt represented he would be held in custody in the courthouse while subpoena proceedings and enforcement proceedings were going. I think that was an improper representation, but that is all that was induced as testimony on that occasion.

I don't know what his view will be on testifying before the committee, but I think two things: One, you would know whether you are going to have a problem; and, two, we would be able to compress down out of a lot of what he said before the Investigating Committee by some questions that have an adequate format, what he can competently testify to at trial, so I think it would save some time, sir.

Mr. BARON. With all due respect, I have met with Dredge and I told him that the day was very likely to come when he would have to testify in these proceedings, and it is my belief—and I can't guarantee anything, I don't control this guy in any way, I don't think anybody does—that he understands that he will be called to testify and that he will ask, I am sure, for some adequate protection in terms of people not knowing where he is coming from, perhaps even testifying from behind a screen.

The VICE CHAIRMAN. Is Nesline about like Dredge?

Mr. BARON. Nesline—I'm sorry?

The VICE CHAIRMAN. Is Nesline about like Dredge?

Mr. ANDERSON. Well, there are two problems on Mr. Nesline. Mr. Nesline spent 11 months in the slammer, rather than testify under immunity before a grand jury, so he takes seriously his views on whether he will or will not testify. Second, my understanding is—and it is based in part on a memorandum by a House staff member—Mr. Nesline is in a fairly advanced state of Alzheimer's disease, and I am just trying to find out whether there is something there or whether this is another witness who is dead.

Mr. BARON. We called Nesline, we subpoenaed Nesline, and his counsel filed a stack of doctors' reports, literally a couple of inches thick, representing that he had Alzheimer's disease. We frankly didn't just rely on that, we contacted his probation officer and the probation officer confirmed that he was an unreliable witness, that he did in fact have Alzheimer's disease and on that basis we did not pursue it.

The CHAIRMAN. In light of that information, you still would like us to issue a subpoena to him to sit for a deposition, is that what I understand?

Mr. ANDERSON. Yes, Senator, two-fold: The memorandum I read suggested that sometimes his long-term memory seems lucid, it is his short-term. Quite beyond that, I still think it bears on the individual conscience of every Senator, the fact to which the passage of time has impaired this. If Mr. Nesline is an unavailable witness, you have now in the materials recently given me the report by an FBI agent in which he said Judge Hastings was innocent, that he was still in communication with Borders, and that Borders was pulling a scam. I need to establish his unavailability as a witness in order to try and get around the hearsay problem in terms of getting that information into the record before you.

The **Vice Chairman**. Well, what information would you get in, if he is unavailable as a witness? Would you be satisfied having him declared unavailable as a witness, because the House might agree to that?

Mr. **Baron**. I am not sure where it gets us, but at the moment we have reason to believe that he is not competent to testify.

The **Vice Chairman**. Would you be satisfied having him declared unavailable as a witness?

Mr. **Anderson**. Let me, if I can, have a day or so to think about that because I want to see if I can get around the evidentiary problems and get in what I want to get in.

Mr. **Baron**. We would simply note for the record that the representation that was just made to the committee, that Nesline stated that Judge Hastings was innocent, if you read the next line in the document from which the excerpt was taken, it says he based that on what he read in the newspapers.

Mr. **Anderson**. Can I respond, since we are getting into that, we need to understand Nesline with some care. That is indeed what he says in the next line. However, Mr. Baron has now suggested that there was a conspiracy between Borders and Santo Trafficante, the broker. That was run out of Joe Nesline's apartment. Joe Nesline cannot claim that what he says about this affair is stuff he read in the paper. By all accounts, Joe Nesline was the broker.

The **Vice Chairman**. Is that what you want to get in as to Nesline?

Mr. **Anderson**. I want to get in the fact that the man who was responsible for all of the deals had no control or influence over Judge Hastings.

The **Vice Chairman**. Did Nesline say that at some point?

Mr. **Anderson**. He reportedly said it. It's in an FBI 302.

The **Vice Chairman**. So if he is unavailable as a witness, you would seek to get that statement of his into evidence through that document?

Mr. **Anderson**. I would try and get the agent himself in here so it could be amplified in his notes, because there is one parenthetical where there is a problem.

The **Vice Chairman**. So if he is unavailable as a witness, it is then appropriate to have a hearsay declaration from an agent? I don't know.

Mr. **Anderson**. I don't either.

Mr. **Baron**. It is not even close. It has got to be——

The **Vice Chairman**. Wait a minute. We are asking him. You don't have to give an argument yet.

Mr. **Baron**. I am ready.

Mr. **Anderson**. I am not sure that I can get it in, but then again I am not sure what rules of evidence you are applying, and I may not know that until we get into the process about midway into the trial.

The **Vice Chairman**. If then.

Mr. **Anderson**. If then.

The **Vice Chairman**. How about Rebecca Nesline?

Mr. **Anderson**. It is just a question of what she would know, because she lived in the house with the man, about his dealings. There is evidence that Mr. Trafficante was there. There is evidence that she was in the same restaurant with William Dredge while allegedly Mr. Nesline had dinner with Borders and Trafficante. I don't know what she can give me.

The **VICE CHAIRMAN**. On the process to bring these people in, whose burden is that?

Mr. **ANDERSON**. I am sorry, Senator. I don't understand the question.

The **VICE CHAIRMAN**. Whose burden is it to compel their attendance at this proceeding?

Mr. **ANDERSON**. I assume it is the Senate of the United States.

The **VICE CHAIRMAN**. I suppose there is going to be agreement on both sides on that. The House managers aren't going to argue that point.

Mr. **BRYANT**. On getting Nesline in?

The **VICE CHAIRMAN**. On getting all these witnesses in. I can see a lot of paper filed, a ton of it.

The **CHAIRMAN**. Let me ask, on Rebecca Nesline, will you have a position? Have you talked to her?

Mr. **BARON**. No. I have no interest in talking to her.

The **CHAIRMAN**. No interest in it. What about this fellow, Chaconas?

Mr. **ANDERSON**. His name crops up in various investigations as a figure. There is evidence that Dredge was in telephone contact with him in the period. Mr. Chaconas picked up one of Dredge's hotel bills. Chaconas reportedly told a Washington lawyer that Dredge was willing to pay that lawyer up to $100,000 to fix his case in Baltimore.

I don't know what Mr. Chaconas would testify to. He has never been called anywhere for anything, but there are enough allusions to him that I suspect he is the best substitute for Joe Nesline presently in Washington, DC.

The **CHAIRMAN**. Do we have any evidence that he knows or has an opinion or has expressed an opinion about the guilt or innocence of Hastings?

Mr. **ANDERSON**. Well, he was one of Nesline's friends and sidekicks. He was one of Dredge's friends and sidekicks. He was involved at the time Dredge was hiring a lawyer to represent him in the drug case in Baltimore.

Mr. Chairman, since I filed my provisional report in 1987, I have been pushing like hell to get someone to haul these people in where we could find out. I am now in a discovery posture because they have never been called in. I would love to tell you, yes or no, that he was called in by the Investigating Committee, he was called in by the House, I have a deposition. Unfortunately, the people I wanted pursued just ain't been pursued.

The **VICE CHAIRMAN**. What would you expect to prove through him?

Mr. **ANDERSON**. I would expect to find out what I can prove. I would hope to be able to extract from him that he, too, through conversations with Nesline and Dredge and Borders, had enough data that he can express either directly or by way of opinion that Borders was just pulling a scam on Judge Hastings.

I mean, my theory on this has been no secret since the beginning. I think that all these people believed Borders' claims.

The **Vice Chairman**. How could he express an opinion as to Borders playing a scam on Judge Hastings? Would you expect him to testify that Borders had extracted a scam on him, Chaconas?

Mr. **Anderson**. Senator, let me tell you the events and then we can talk about what which of those Mr. Chaconas might be competent to testify to.

It is my understanding from the various telephone records available that there are calls from Mr. Nesline to Mr. Borders immediately preceding Mr. Nesline's decision to change a plea in a tax case from not guilty to guilty and immediately after he was sentenced to five years' probation. It was a fairly, I think, lenient sentence.

I believe, to the extent I know it from the Trafficantes, that at some point up until about July 8th, Mr. Nesline believed that Borders had the power to fix cases before Judge Hastings and other judges.

My understanding, or at least my theory today is that on July 7th, Borders said that Judge Hastings would continue the *Romano* case the next day *sua sponte*. In point of fact, the next day Judge Hastings put them all in the slammer.

My view is, from July 8th on, everyone knew that Borders couldn't fix a continuance, let alone a case.

Now, Chaconas is on the periphery of this. He has never been called, so I can't tell you what he is going to say, but I can tell you of my investigative intent. He has trailed across this record, and he may be the only surviving person who can tell us.

He did talk to Kenny Robinson, whom Dredge had tried to have represent him, and say Dredge was prepared to pay up to $100,000 to fix the case before Frank Kaufman in Baltimore. He is identified as an associate, and a fairly close one, in the 1985 investigation into Mr. Nesline's activities.

The **Vice Chairman**. Dredge would pay $100,000 to fix a case before Judge Kaufman, you are saying?

Mr. **Anderson**. Yes.

The **Vice Chairman**. Did that involve Borders?

Mr. **Anderson**. At the time when Borders was representing him in the case before Judge Kaufman and Dredge was in the process of shopping for other lawyers to substitute in for Borders—obviously, you don't set your true trial lawyer up—at least I hope you don't set your true trial lawyer up for a fall with the Justice Department without having some backup.

So Borders was representing Dredge in the Baltimore case before Judge Kaufman. Mr. Dredge was shopping. Kenny Robinson is one of the lawyers he shopped with.

The **Chairman**. So this is a pretty tenuous reach for a relevant witness.

Mr. **Anderson**. Mr. Chairman, I agree. I think it should have been done by the Investigating Committee. I think it should have been done during the House inquiry, but I am where I am.

The **Chairman**. What is the House position on Chaconas?

Mr. **Bryant**. Mr. Chairman, we don't mind if he disposes all these people; it is fine with us.

The **Vice Chairman**. Do you plan to be present?

Mr. **Bryant**. Sure. We hope to assert our right to cross-examine him as well, but we are not interposing an objection. We are asking the Senate to be particularly cautious with regard to Dredge because it is a special kind of a case and we don't want to——

The **Vice Chairman**. When I ask if you plan to be present, I want to know if you personally plan to be present, not your side.

Mr. **Bryant**. Me, personally? I won't assure you of that, but our counsel will be here. Why is that an important inquiry?

The **Vice Chairman**. Well, the importance of the inquiry, Congressman Bryant, is that it is important to me whether I am going to be present. [Laughter.]

When you say you don't mind having all these people present, I am just inquiring as to the time drain. This man is going to be there, Anderson is going to be there, and I may be there or a Senator may be there.

I ask it seriously in the sense of personal involvement. I would not expect you to be there because you have got a lot of other things to do, but I ask you the question in terms of no objection to as many of these people as Mr. Anderson wants to testify.

Mr. **Bryant**. Well, our concern is the trial date. I mean, I don't want to be viewed as uncooperative. We view much of what Mr. Anderson has said here as being completely fictitious and impossible to believe if you have any background in the case, and I have not jumped into arguing the facts.

We don't mind if these witnesses are deposed because we are not fearful of what they might show. We are hoping you will be cautious about Dredge. If you choose to have one of us present, one of the members of the prosecuting team will be present at each deposition. I think, frankly, none of it is necessary, but we are not objecting.

The **Vice Chairman**. Well, I think if the depositions go forward, you certainly would have the right to be present, and, speaking for myself, the right to cross-examine.

Mr. **Anderson**. We have no objection to that.

The **Vice Chairman**. That is a deposition.

The **Chairman**. Let me ask—we have got two other groups, as I understand your pleadings, that you have asked to be able to depose. One is a group of supervisors in the FBI, and another is a group of Justice Department officials.

Mr. **Anderson**. Yes.

The **Chairman**. Now, the argument for deposing these people is that they would testify to the fact that they essentially abused their offices?

Mr. **Anderson**. Well, I don't think they will testify to that. But, again, we——

The **Chairman**. But you are going to prove that? I mean, that is part of your case?

Mr. **Anderson**. Well, I am going to prove that as much as the House is going to prove Alcee Hastings guilty. A circumstantial case is a circumstantial case. Now, it was suggested that it might be useful in terms of the memorandum I filed on May 10th where I set out three illustrations and I provided some documentation.

I have the documentation, but unfortunately I don't have the supporting statement because the fax machine broke down, but I will get that over to you as soon as I can, which will give you a flavor of what I am going to ask them about in terms of looking at documents.

I don't expect to prove it, and frankly my priorities or my suggestion would be that in both those categories we start at the bottom of the line, let me work my way up, and then I will come back and tell you, well, look, I have got something that entitles me to get to Judge Webster, or I am satisfied, and I don't even want to go that high.

The CHAIRMAN. So the bottom of the line for the FBI is Marcoline?

Mr. ANDERSON. Start with Marcoline and then move up from there and, similarly, Mr. Weingarten, Mr. Richter, and Judge McDowell.

The VICE CHAIRMAN. What is your either offer of proof or hope for proof?

Mr. ANDERSON. Well, let me take Mr. Richter and Mr. Weingarten. First of all, let me say—and I think this may be the next item on your agenda, but let me just interject here, I still haven't had a response from either the Director of the FBI or the Attorney General on the documents I have requested from them. If there is anything that the Senate can do to at least urge them to tell us what their position is quickly, that would be appreciated.

The VICE CHAIRMAN. What documents have you requested?

Mr. ANDERSON. I have sent a letter to—pursuant to the Committee's order, I have sent a letter. The most critical documents I have requested on the Justice Department side which bear upon your question are—it is my understanding that it is standard practice within the Public Integrity Section, at least, that a very extensive, typically fifty-page prosecutorial memo is prepared. It is reviewed by an indictment review committee of senior trial attorneys. It then goes to the chief of the section and, in important cases, goes up the chain.

That is the crucial document that I have asked for there so I can see what the approvals were and know who was involved in the decision to proceed against Judge Hastings. I have asked for other status report documents which may indicate the Justice Department's opinion on the arrest of Borders.

The VICE CHAIRMAN. And what do you hope to establish through that?

Mr. ANDERSON. What?

The VICE CHAIRMAN. What do you hope to establish through that?

Mr. ANDERSON. Well, let me tell you the one fact that I want to discuss with Mr. Weingarten and Mr. Richter at the outset and then we will come to what else I hope to establish. I don't think there can be any dispute now that Dredge was a material witness, in light of Judge Hastings' attempt to make a rainmaking defense.

The VICE CHAIRMAN. Your voice trailed off. What did you say?

Mr. ANDERSON. Judge Hastings asked the court to order Mr. Dredge produced as a material witness. Judge Hastings wanted to prove that Borders was a rainmaker and that all judges were vulnerable to people who have claimed with the power without having it to fix cases.

The prosecutors at trial represented to the court that Borders is not a material witness. It is in the record. Borders told the FBI that—Dredge told the FBI that Borders had made these claims with respect to other judges. Judge Gignoux ruled that Judge Hastings, unless he could provide one witness who would show that Borders had made these claims with respect to other judges, could not introduce his rainmaking defense.

Dredge was a material witness. The prosecutors, in my view, lied to the trial judge about that issue. I would like, in preparation for trial, to know if there is any explanation they have for that lie.

One of the issues you have left open is if I can show that government evidence has been prepared by people whose credibility is questionable, I should pursue it. The Justice Department is well——

The VICE CHAIRMAN. We have left that open where? In what way did we leave that open?

Mr. ANDERSON. Well, you granted in part and denied in part the motion in limine. You left me open with the FBI and the Justice Department.

The VICE CHAIRMAN. Well, we are waiting to hear what relevance there is to anything, to an offer of proof.

Mr. ANDERSON. That is why I want to take the deposition.

The VICE CHAIRMAN. Well, suppose they lied and they said Dredge was not a material witness and there was a prejudice at trial in not having a material witness present, but if Dredge is available to testify now on the substance, doesn't that reach the substance of the case as to Judge Hastings in our proceeding?

Mr. ANDERSON. Well, it does, except you have an awful lot of government documents on their proposed stipulation of documents, and you have most of the witnesses. Mr. Richter is on their witness list, the FBI agent is on their witness list.

If I can show, for example, that Mr. Richter lied on a prior occasion, I take it it would be relevant at trial, enabling you to assess whether his testimony on this occasion should be truthful. That is my understanding.

The VICE CHAIRMAN. Well, that gets involved in collateral issues and there is a question as to how far you go.

Mr. ANDERSON. Yes, I agree it is a question of how far you go. I think in this case you really ought to bend over because you are putting a United States judge's life on the line.

And I am making the case—and I understand the House managers disagree with me—I am making the case that this guy has been had.

The VICE CHAIRMAN. So you would like to impugn the testimony of certain witnesses?

Mr. ANDERSON. Yes, and certain documents.

The VICE CHAIRMAN. All right. Who are the witnesses—what I want to know is what will the witnesses testify to, because whether we get involved depends on how important their testimony is.

Mr. ANDERSON. Senator, I will try and explain it further, but let me emphasize again, I am playing a chicken-and-egg thing. The people I wanted called during the House inquiry so that their testimony could be recorded so I could answer a question like this weren't called.

I am dealing in my proposed witness list with people who have not been examined on these subjects, so it is hard for me to tell you.

The VICE CHAIRMAN. All right. We have an FBI witness. You want to impugn his credibility through this process by getting at documents which will show him to be a liar on other matters. I would like to know what the FBI witness is going to testify to—and the House managers can answer the question—identify a witness whose credibility you would like to attack.

Mr. ANDERSON. Well, let me illustrate the one, because of his testimony in the documents, that I can do without a deposition and just give you one illustration.

The VICE CHAIRMAN. All right, fine.

Mr. ANDERSON. Under examination by Mr. Bryant, who is a former prosecutor, agent Christopher Mazzella, who supervised the Mayor Clark investigation, was pressed. He had been pressed by Representative Edwards, who is a former FBI official, by Representative Conyers, and Mr. Bryant, I think, at the end.

"Just so we are perfectly clear, Mr. Mazzella, did the FBI have any charges or information against Mayor Clark that gave it leverage in bargaining for his cooperation?" Agent Mazzella: "No, sir, there was no prosecution pending."

An FBI telex from Miami, which was Agent Mazzella's station, dated March 3, 1986, in the midst of inducing Mayor Clark, includes the statement, "On the other hand, Miami does not believe locking Clark into his testimony before the grand jury prior consensual monitoring is necessary for the following reasons: One, Clark's presence at any grand jury increases the charge of leaks; two, the Department of Justice has already authorized the prosecution of Clark under Title 18 U.S.C. Section 1001. Clark's testimony before a Federal grand jury could significantly impede prospects of such a prosecution, thereby eliminating a bargaining tool in seeking Clark's cooperation."

That memo was not before me when I had my opportunity to examine Agent Mazzella there. It apparently was not before the members. But, here, you have an agent who said, no, we had no bargaining leverage against Clark, and here you have an FBI memo from that supervisor's office saying there was already a prosecution authorized. That strikes me as impeachment of credibility.

Mr. BRYANT. Mr. Chairman, if I might respond——

The VICE CHAIRMAN. Excuse me. Is Mazzella going to be a witness?

Mr. BRYANT. Yes, he will be a witness. Under any kind of analysis——

The VICE CHAIRMAN. What will Mazzella testify to?

Mr. BRYANT. Well, he will testify to his interview with Mayor Clark. Now, we are not talking about—the other transaction involved the Title III revelation and the contents of a federal-court-supervised wiretap. We are not talking about the bribery case any longer. This is a different matter.

He will testify to his interview with Mayor Clark, in which Mayor Clark said that Judge Hastings told him, stay away from Waxie Gordon.

The **Vice Chairman**. Is Mayor Clark going to testify?

Mr. **Bryant**. Yes.

The **Vice Chairman**. So why do you need Mazzella to testify about what Mayor Clark——

Mr. **Baron**. Mazzella will testify about a lot of things. He was the supervising agent on the investigation.

The **Vice Chairman**. What else will he testify to as to what Mayor Clark says? He is not competent to testify as to what Mayor Clark says unless it is a prior consistent statement or some other fancy theory.

Mr. **Baron**. He will testify about the conduct of the FBI investigation into the leak. One of the things they did along the way was they interviewed Mayor Clark, but that is just a very small piece of his whole testimony.

The **Vice Chairman**. Well, what does he testify to which is important?

Mr. **Baron**. He is a critical witness.

Mr. **Anderson**. He would be on our witness list if he was not on theirs.

Mr. **Baron**. Yes. He is a major witness.

The **Chairman**. Let me just ask about Marcoline. He was not on your witness list, he was not on your witness list. Now, you need to depose him.

Mr. **Anderson**. Well, I have that category on my witness list of FBI officials and Justice Department officials before I can sort out—I truly—and I emphasize I am in the position of not having seen—I am doing true discovery here. I am trying to find out what some of these documents mean and what happened.

They will or will not go on my witness list, depending on what I discover. Everyone else—the investigating committee of the House has had subpoena power to go out and interview or haul people in, with sufficient staffs and good travel budgets. I haven't, Senator.

The **Chairman**. Have you made any effort to contact Peter Marcoline?

Mr. **Anderson**. No.

The **Chairman**. And why is that?

Mr. **Anderson**. First of all, I deem everyone in the Executive Branch, at least on the House side, as adverse to Judge Hastings. These are the men who prosecuted him. Secondly, if I interviewed them, it would create incredible—if they testify differently than my interview at trial, what am I supposed to do, hop on the stand and say that is there?

When you have an adverse and hostile witness, the only way I can get material that will enable me to prepare for trial is getting it under oath before a reporter. I mean, friendly witnesses—I mean, Judge Hastings doesn't have too many people whom we do not expect to be hostile or adverse witnesses on that list of depositions.

Those folks, I will give a call on the phone. I don't need to depose Alan Ehrlich, for example, the judge's former law clerk. I can talk to him any time I want.

The **Chairman**. Did you want to go on to other discovery or do you want to go through the rest of these depositions?

The **Vice Chairman**. Well, I am trying to figure out these two categories. The Justice Department is going to be very loathe to start giving you their internal work product, their fifty page prosecution document. Do you think they will?

Mr. **Baron**. I think they will fight it very vigorously.

Mr. **Anderson**. Just a reaction. I don't believe the Justice Department—they did give it to Judge Nixon. I believe he obtained it in connection with the 2255 here. So Judge Nixon had four months to do discovery and litigate this 2255 while the House stayed its hand in impeaching him.

If the Justice Department now takes the view that the acquitted judge doesn't get this stuff after the convicted judge does, and if the view is that the acquitted judge is entitled to less discovery than the convicted judge before his case comes to trial in the Senate, I am going to——

The **Vice Chairman**. You haven't had a response on that. I agree with you that there is no distinction there on that basis alone, but these are pretty complex issues, and they may have very different things. And what I am trying to get to is some sort of an understanding as to where you are at the end of the rainbow.

We have got two complex cases to try without getting into collateral issues to decide credibility, unless there is some very close connection and some significant possibility, probability of something relevant, and it is very hard to assess looking at these papers.

Mr. **Anderson**. Senator, I would ask you to look at the papers and the provisional report, if you would, again. But I again emphasize, I won't know how close I can bring the connection.

I mean, I keep finding things that suggest to me it is closer and closer in the documents, but until I have what documents I am going to get and until I have some discovery—I have not, over the past seven years, had the opportunity to go out and haul these people in and make them tell me.

The **Vice Chairman**. Mr. Chairman, I ask no further questions because I don't think I will find anything else out.

The **Chairman**. Let us go on to other discovery. Do we have any matters pending other than the—you have already indicated that the FBI and the Justice Department have not given you the documents you have requested.

Mr. **Anderson**. They have given me no response.

The **Chairman**. No response. We will follow up on that, now that you have requested that we do so, and see if we can expedite a response from them, one way or another.

Mr. **Anderson**. Also, Mr. Doar just—I think the committee has it—Mr. Doar has responded on behalf of the Judicial Council of the Eleventh Circuit. Unfortunately, he is in Washington, not New York, so I hope to be able to examine those tomorrow.

I think I owe the House six pages of discovery, which is my reciprocal discovery, and I will get it to them as quickly as I can.

The **Chairman**. Is there anything else that the House knows of that is in the discovery category?

Mr. **Bryant**. Well, he made brief reference to it, but our reciprocal discovery was due May 10th. I would like to state specifically two of the things which we particularly want in order for there not to be any confusion on the matter later.

First of all, he is in possession of a transcript of Judge Hastings' conversation of May 19, 1986, with regard to the leak with Mazzella, the leak of the wiretap information.

Second, he is in possession of a transcript put together by their investigator, a man named Mr. Hellman, in which he was talking with Mr. Dredge. He didn't mention it a moment ago, I don't believe. We would like to have a copy of that transcript and, of course, we would like to have all the rest of it as well.

Those two particular things, we know he is in possession of and we would like to have the Senate ask him to please deliver to us.

Mr. **Anderson**. Well, let me just respond. The Hellman-Dredge transcript—this is the first time I have ever heard of it and, God knows, I hope we have it. The transcript of the leak on May 19th, we do have, and I am happy to give it to them.

I have a partial transcript that was given to me by counsel at the deposition of Rudolph Giuliani when he was asked a couple questions about this, his decisionmaking process in Hastings. I have a letter from Rudolph Giuliani to Bob Graham, commenting on the Haitian problem and saying it is all Judge Hastings' fault.

At the present time, those are the only discovery documents. I will undertake with great interest to find a copy of the Hellman-Dredge transcript. I was unaware it existed.

Mr. **Bryant**. Hellman may be a tape rather than a transcript. We don't know for sure.

Mr. **Anderson**. If I can find it, I will——

The **Chairman**. The fourth item here on this agenda is discussion of conduct of the evidentiary proceedings; first, the bifurcation of proceedings. The House's position is that we should bifurcate them. We should first do the bribery/conspiracy; then we should do the wiretap.

Mr. **Baron**. The bribery and conspiracy, and the perjury count, the first 15 articles.

The **Chairman**. Right.

Have you responded on that, Mr. Anderson?

Mr. **Anderson**. I have not, and I will now. I don't think it can be fairly done for two reasons, Senator. First of all——

The **Chairman**. Can't be fairly done in what sense?

Mr. **Anderson**. All right. It can't be done——

The **Chairman**. It can't be fairly split into two parts?

Mr. **Anderson**. I don't think the trial can be bifurcated. It feels a lot like two bites at the apple. The House chose to file one 17-article set of indictment and there ought to be one trial. Judge Hastings should not be put to the burden of taking the stand twice, and that is two bites.

Secondly, although I realize it is not a matter that the Senate should make a judgment on at this point, as you know, at least one of our theories is that we are dealing here with a runaway FBI who cannot be believed in these matters.

I think that the handling of the FBI of the conduct of the investigation in the Mayor Clark disclosure matter has a bearing on that issue, and that the House ought to put on its whole case all at one time and have the opportunity to cross-examine. And then, in defense, when the time comes for Judge Hastings to testify, well, then Judge Hastings ought to testify once, and only once, and preferably before the full Senate, but that is an issue that will go way down the line.

The CHAIRMAN. Does the House want to be heard further on this issue?

Mr. BRYANT. Senator, when we were hearing this matter in the House, it was a subject of initial confusion for us, the fact that there were two totally transactions. It is much more neat and much more understandable to have the two matters tried separately. They are totally unrelated and it just doesn't make any sense to mix them together.

The VICE CHAIRMAN. Why? If there is any interrelationship, why does it cause you a problem?

Mr. BRYANT. There is no interrelationship.

The VICE CHAIRMAN. Well, he is asserting one with respect to his theory of defense as to the FBI. I agree with you as a general matter that bifurcation is simpler, but if there is any reason why they string together, we will understand the mix.

Mr. BRYANT. The fact situation in the bribery/conspiracy case is relatively complicated. There are a lot of names in it, there are a lot of dates. There are references backward and forward to dates. There is a correlation of telephone calls for the events that took place in another city.

The VICE CHAIRMAN. Well, we have to sort it all out, but we can keep track of the two matters.

Mr. BRYANT. I would just represent to you that we——

The VICE CHAIRMAN. I am just trying to figure out what the weighty argument on the other side is.

Mr. BRYANT. You mean his side?

The VICE CHAIRMAN. No; your side. He has advanced a couple of reasons which have some merit; how much depends upon what the counter-considerations are.

Mr. BRYANT. Well, I think the most important consideration is that 12 very busy U.S. Senators not have any obstacle placed in the way of totally understanding the facts.

The VICE CHAIRMAN. We are going to have to hear both halves.

Mr. BRYANT. There is a great deal more difficulty hearing them combined.

The VICE CHAIRMAN. You might have chosen just to bring one case and let us rule on that and then impeach him on a second case. That might have done us the favor of not hearing them both.

Mr. BARON. Senator, I have to get back in the private sector some time.

The VICE CHAIRMAN. You may motivate some of us to do the same. [Laughter.]

Mr. ANDERSON. Let me add two additional points. I am often reminded when I make requests that things are unprecedented. My recollection is that this would be unprecedented. My recollection also is that at least in the *Ritter* case, and I think others, there were six articles that were essentially unrelated transactions in charges against the judge. So I would rely on the absence of precedent in some degree on this.

But, secondly——

The CHAIRMAN. Absence of precedent to bifurcate?

Mr. **Anderson**. Yes. I don't think it has ever been done that I am aware of.

The **Chairman**. Always, before, they have just——

Mr. **Anderson**. And they have had unrelated charges in the same—you just put it all on at once, and let the defendant respond and come up with witnesses.

The **Vice Chairman**. Well, you wouldn't bifurcate six issues.

Mr. **Anderson**. What?

The **Vice Chairman**. You would septicate them, wouldn't you?

Mr. **Anderson**. I stand corrected, Senator.

Mr. **Bryant**. On that point, also——

The other piece is—and I think it's unfortunate, but nonetheless the reality as matters now stand is that this case is going to be essentially tried on the documents. I mean, my understanding of the role of the committee is to make rulings and get a trial done and receive evidence.

But at some point, this is going to go up with proposed findings and whatever else in lovely printed volumes. So whatever confusion may be created on the day the particular witness is or is not heard is something which, in the mature time of study, I think, will be—the Senate may be able to sort it out.

The **Vice Chairman**. What do you mean saying it is going to be tried on the documents, as opposed to witnesses?

Mr. **Anderson**. Well, you 12 will be the only Senators who really hear the witnesses, it is my understanding, and I would like to believe that the other——

The **Vice Chairman**. It will be tried on the documents because the record will be read by the other 88?

Mr. **Anderson**. Is that a promise?

The **Vice Chairman**. I am trying to get your theory of the case.

Mr. **Anderson**. No. I mean, I am saying my theory—one of the reasons I don't find—I hope you are representing that all 88 will personally read the entire record. But beyond that, there is going to be, at least under the recommendation of the Rules Committee, a considerable period of time between the printing up of this record and the deliberations by the Senate.

So the confusion at the moment on testimony—the decision isn't going to be made a jury that retires immediately after the testimony.

Mr. **Bryant**. You might also consider that we are going to make an opening statement in this case which will lay out what we intend to prove, and he will make one as well. If we make an opening statement with regard to both transactions in one, it will be a long time before the members of the committee hear evidence with regard to the second one and, no doubt, will have forgotten by then exactly what we are going to lay out.

The **Chairman**. Another issue we had here on the agenda is the question of how to try to allocate the time in this case. The House has proposed dividing the available time, half to the House, half to Judge Hastings, and then leaving it up to each of you to determine what witnesses to call and how to proceed to get the case done in that respect.

Is that basically the House's position?

Mr. **Baron**. That is basically it, Senator. We proceeded on the assumption that you were most concerned about the total number of hours, and this would give 45 hours to each side to present its case. Whether it was on cross-examination in how you used your time, whether it was on direct examination, you didn't really care, in a sense, how we presented it. You would leave it up to us as to whether we used live testimony, whether we used the documents.

The **Vice Chairman**. What is your thought, Mr. Anderson?

Mr. **Anderson**. Senator, my thought is that there will not be a trial on July 10th that is fair to the Respondent, and there will not be a trial that is crammed into a compartment that is fair to the Respondent. I realize your view on that.

I think the specification in advance that a complex case will only be allowed three or four weeks, whatever it is, is also unprecedented. I don't think the decision can be made until we have done more discovery, and I can be more frankly comfortable about who the witnesses actually are or are not.

I reiterate, on the decision the committee last night which apparently will not allow me funds, Senator, there are fifty hours a week, roughly, in my hide. With the summer recess when I get exams done, that goes up to sixty, seventy in a good week. That is what you have got. The ten folks here ain't on my staff. Now, I understand you can push me.

The **Vice Chairman**. So the question is not how much time, because the committee has decided that, but the question is division as to half-and-half. Listen, we are always prepared to entertain additional motions, but this issue is just how you divide whatever time is available.

What do you think about fifty-fifty?

Mr. **Anderson**. I think the judge may need more, Senator, but I have got to put together some more discovery before I can—the problem is we are not at the point—if we were at the point where realistic pretrial orders were on both sides——

The **Vice Chairman**. I think I understand your position. We are going to be out of time in seven minutes.

The **Chairman**. I think we should get from Elaine or Mike here—what is the time frame from now on? What is the next date that is coming up that we have previously identified for meeting with counsel or anything else?

Ms. **Stone**. It is a June date, and I don't remember. June 22nd.

The **Chairman**. June 22nd is the next meeting, and that is——

Mr. **Davidson**. Final pretrial statements.

Mr. **Anderson**. And, Mr. Chairman, I would move it be held in Miami. I am the only one here who travels.

The **Vice Chairman**. Has Judge Hastings defrayed any of your costs?

Mr. **Anderson**. Yes, sir, to the extent he can. You have seen the statements which indicate his credit card drawings. It is not quite that high, but it is high enough.

Mr. **Gekas**. I would share that the schedule has already been extended by what you indicated as to the discovery or the stipulations.

The **Chairman**. What did we indicate?

Mr. **Gekas**. You indicated by the questions and by the inability——

The **Chairman**. We didn't indicate anything by the questions. We indicated that we could issue an additional order.

Mr. **Gekas**. That is what I am saying, that that should be kept in mind as we are going further on establishing timetables. That is all I am saying.

Mr. **Davidson**. All I can say about that is that this statement will have in mind, if Judge Hastings' proposed stipulations—this next period of time would be devoted to that. I take it no stipulations will be offered. I mean, that time has passed.

Mr. **Anderson**. If I had enough time, I might have done it.

Mr. **Davidson**. So that burden, that task which would have occurred within the next several weeks will not be occurring, and it does provide a period of time to focus on other things.

The **Chairman**. Why don't we—I think Senator Specter and I need to visit with counsel on all these things and try to get whatever additional orders we might think are appropriate out in the next few days with a little more guidance.

Mr. **Bryant**. There is one last matter.

The **Chairman**. Yes.

Mr. **Bryant**. We have suggested, and everybody agreed, to the use of prior testimony in which we would be able to use the former testimony of people who have been deposed or testified in the past. All of it would be open.

The **Vice Chairman**. Is there any objection to that, Mr. Anderson?

Mr. **Anderson**. Yes. I haven't had the opportunity to cross-examine them.

Mr. **Bryant**. But our suggestion—if a party wants to cross-examine a witness, they can call him forward and cross-examine him in the case.

The **Vice Chairman**. How about the testimony at trial?

Mr. **Anderson**. I think we would have to look at that. Some were not controversial. Some of the witnesses at Borders' trial, I might agree because there simply was no dispute.

The **Vice Chairman**. We are talking about the trial of Judge Hastings.

Mr. **Anderson**. The ones that we cross-examined—in my view, the testimony at the prior trial is available to either party to impeach or refresh recollection, but it is the live witness and what he says in the Senate that matters.

Again, I go back to Agent Murphy because he is one of my favorites, and I can go back to Hemphill Pride. I today have information which will make a different cross-examination possible.

The **Vice Chairman**. Well, I think the proposal is that the testimony be admissible on the ground that there is a prior proceeding where a person was subject to cross and was cross-examined. And then if you want to add anything to it or impeach or bring another witness forward, you can, but at least that the prior testimony would be admitted.

Mr. **Anderson**. Let me then—Senator, it may be that I live in a Quixote-like world and ought to go back home at night, but I had understood the Rules Committee recommendation that this be videotaped to be one in which it would at least enable the Senator to assess—those who wish to view it—to assess credibility.

To put in a written assertion of a witness and then say "your witness to cross-examine"—the viewer doesn't know—there is no way to structure a trial that way. I understand there are continental systems, and there are regulatory proceedings where it is done, but I think the record of this trial ought to be a trial.

I think the viewer who is watching it ought not to have a voice over saying somewhere "and now the one hundred pages of Agent Murphy's transcript from a prior case was introduced and Professor Anderson will cross-examine."

The VICE CHAIRMAN. Are you talking about a viewer as one of the other 88?

Mr. ANDERSON. Pardon?

The VICE CHAIRMAN. Are you talking about a viewer as one of the other 88?

Mr. ANDERSON. That was the recommendation of the Rules Committee that these be made—that it be shown.

The VICE CHAIRMAN. But we are talking about the 12. The other 88 would have the same access we would.

Mr. ANDERSON. I understand, but you ought to also see the witness live. He ought to present what he has got to say today from his present recollection. Another reason is—and I feel very strongly about this, Senator—another reason is recollections fade in seven years.

I think Judge Hastings, in fairness, is entitled to have the committee assess what is the present recollection of these folks circa 1989.

The VICE CHAIRMAN. Why, Mr. Anderson? The recollection is, doubtless, better before.

Mr. ANDERSON. But the problem is how many errors do you make in—this is a perjury case, as well as being a bribery/conspiracy case. Judge Hastings has been handicapped by the passage of time because witnesses died whose testimony wasn't recorded. Witnesses have gotten Alzheimer's disease.

You know, we want to equalize the handicaps. The fact that there have been other people who have been able to record the testimony for seven years and Judge Hastings hasn't—they shouldn't get the benefit of the early recollection because this man doesn't have it. Let us try this case straight up in 1989 if we are going to try it eight years after the fact.

The VICE CHAIRMAN. But Judge Hastings had an opportunity at that time to put on all the witnesses he chose.

Mr. ANDERSON. No, he didn't. Judge Gignoux denied him the right on the rainmaking defense and a lot of that type of evidence is gone, plus the fact that he won when he had that opportunity and the jury had it all live. They didn't have any prior testimony; it wasn't done in short-cut. He won, 12-zip.

The CHAIRMAN. Let me ask the House managers and counsel here, are you suggesting that you would put in—that the proof of your case would rest upon written material you would put in? I mean, you would put in material to prove some of the factual basis of your case and not call witnesses for major parts of your case?

Mr. **Baron**. I think for major parts of the case, significant aspects of the case, there will be live testimony. What we're contemplating, however, is that there may be witnesses whose demeanor is not particularly significant as far as we are concerned, that we may not have been able to work out a stipulation as to that witness' testimony where simply just as a way—since we only have "X" number of hours in which we are going to have the opportunity to present the case, we may wish to offer that witness' testimony in a prior proceeding, and both sides will have that option.

I think for a critical witness, an important witness, a Hemphill Pride, Agent Murphy—I mean, these are people who are going to testify; they will be here live, but there may well be some witnesses where we opt, first, to save time because we are running out or because we don't think demeanor is particularly significant.

The **Chairman**. Could you specify for us—I think it is difficult for us to try to make a judgment in general on this kind of an issue. If you could specify for us which witnesses you would not want to call at trial and you would prefer to put in written testimony on and which prior testimony it was and what it would be proposed——

Mr. **Bryant**. I should emphasize we are not pressing this because it presents us with any advantage. You asked for suggestions about shortening the trial procedure. If you choose not to do this, then we are quite happy to bring the live witnesses forward.

The **Vice Chairman**. Congressman Bryant, as the Chairman suggests, maybe Mr. Anderson would even agree to some of the witnesses that way.

Mr. **Baron**. If somebody has a problem with demeanor—suppose somebody puts on paper testimony and the other side says, gee, I think you ought to really see that witness, let them call them in their side of the case.

The **Chairman**. But here is what I am trying to get away from. I think we owe it to the full Senate to prepare a comprehensible record of the facts so that a Senator does not have to sit down and read twenty volumes because you decided that the first four volumes should be the trial at the district level and the next three ought to be the Judicial Conference trial. I mean, I think that gets to be an unreasonable burden on a person trying to sit down and understand what went on.

Mr. **Baron**. To the extent that we have really structured what our proof will be, we are not contemplating anything remotely like that. We are talking about perhaps an occasional witness here or there.

The **Chairman**. Well, if you could specify which occasional witnesses and what your expectation would be, then maybe we could join the issue, and you can determine whether Mr. Anderson still objects to those occasional witnesses and if he does we can make a decision.

Mr. **Anderson**. Just so we all share it, although I am sure it probably hasn't occurred—one of the problems is that they have the access to the testimony, and the proposal would be that they could conserve their scarce trial time, but that Judge Hastings, if he wanted to cross-examine, would have to use his trial time to do it. I think I will run out of time cross-examining in the first 45 hours, and especially——

The **Chairman**. But this is an objection you can raise in the context of a specific——

Mr. **Anderson**. I understand.

The **Chairman** [continuing]. If they proposed somebody that you felt was not proper.

The **Vice Chairman**. How about if we charged them the time that it took to put the witness on?

Mr. **Anderson**. I will look at their proposal, Senator.

The **Chairman**. What else? Anything else we need to try to do today?

Mr. **Bryant**. I believe that is all that we have.

The **Chairman**. Does anything else occur to you, Arlen? Have you got clear answers to all these questions?

The **Vice Chairman**. Yes, quite a lot occurs to me, but I will withhold.

Mr. **Baron**. All in all, you wish you were in Philadelphia.

Mr. **Bryant**. I would like to say we let a lot go by here on the factual assertions which we would normally argue with.

The **Chairman**. We understand that.

Mr. **Bryant**. I hope you will keep that in mind.

The **Chairman**. Mr. Anderson?

Mr. **Anderson**. I just want to correct the record on one additional point. I do recall it having been suggested that no competent jurisprude in the twentieth century would cite Black's Law Dictionary. I would call to your attention that the Supreme Court of the United States, in a majority opinion, cited it last week, and so perhaps we ought to impeach all of them.

The **Chairman**. Let us not re-argue that.

Mr. **Bryant**. I just want to impeach your client; that is the only one I want to impeach.

Mr. **Anderson**. I understand that, sir.

The **Chairman**. All right.

The Vice **Chairman**. The committee thanks you for your diligent work. It was quite apparent to this Senator that there has been a lot of hard work on both sides and I want to commend you.

The **Chairman**. We will re-group on the twenty-second, and we would urge everybody to keep working to narrow the issues and narrow the items of disagreement on procedure.

[Whereupon, at 6:35 p.m., the committee was adjourned.]

PRETRIAL FILINGS (continued)

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

RECEIVED MAY 1 9 1989

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

A STATEMENT CONCERNING JUDGE HASTINGS'S NEED FOR TIME AND FUNDS TO DO NOW WHAT THE HOUSE SHOULD HAVE DONE BEFORE IMPEACHMENT: THREE ILLUSTRATIONS WITH SUPPORTING DOCUMENTS

On May 10, 1989, counsel for Judge Hastings submitted a memorandum concerning the need for time and funds. That memorandum gave three illustrations of the kind of information that his counsel had found through a cursory review of FBI files recently provided. This supplemental statement presents those illustrations with an Appendix ("A") containing supporting documentation.

The Recent Production and the Nature of the Work Now Required: Three Illustrations

On April 26, 1989, counsel for respondent received approximately 16,000 pages of material representing copies of files and other materials which the House had obtained from the FBI. An inventory of those materials is appended to this memorandum (A.1-4). Some of those materials were duplicative of materials counsel had previously examined;

most, however, were new. Even materials that were previously examined must now be re-examined in the context of the files of which they are a part in order that their significance might be properly assessed. Based upon his preliminary assessment, counsel for respondent has concluded that approximately 14,000 pages must be examined with some care.

Three points discovered to date should suffice to illustrate the relevance and importance of these materials and the need to afford counsel sufficient time to review and digest them with care:

1. Nesline's Report to the FBI -- Hastings is Innocent; Doar's Response -- Who Cares? In the course of a 1985 investigation, Joseph Nesline, the Washington underworld figure, who must have known, expressed his view: Borders had no control or influence over Judge Hastings and was simply running a scam (A.6).[1] Nesline also disclosed that Borders was sending him letters through an intermediary and that Nesline was sending Borders money in prison. The FBI files disclose that the FBI made this information available to John Doar and that Mr. Doar advised the FBI that the Investigating Committee did not want the FBI to pursue further inquiries along this line (A.7-8). The fact that the Inves-

---

[1] Nesline's reported statement that "his knowledge came from the papers and that he did not know any of this first hand" conflicts with the view taken by everyone who has investigated the case and must be rejected. According to the FBI and the Investigating Committee, it was Nesline who introduced Dredge to Borders and Nesline who brokered a deal between Santos Trafficante and Borders. Nesline's knowledge was such that he spent eleven months in jail because he refused to disclose that knowledge to the 1981 grand jury, even after he had been granted immunity.

tigating Committee did not even seek to compel Nesline's testimony even after receiving this information can only be described as stunning in light of these disclosures.

This is an outrage that cannot be ignored. It now appears that in 1985 there was evidence in the form of Nesline's testimony and Borders's letters that might have established Judge Hastings's innocence conclusively. If the investigation had been pursued, it must in any event have generated additional evidence corroborating the judge's claims. The fact that this evidence was not immediately and vigorously pursued by the FBI and by the Investigating Committee is an outrage. The fact that the evidence was not pursued by the House subcommittee during its year-long inquiry is an outrage. The fact that the material was not (and but for the Impeachment Trial Committee's order might never have been) disclosed to respondent is an outrage.

These facts alone should foreclose any further platitudinous claims that the House conducted a thorough and impartial inquiry or that its staff has long since provided respondent with all materials necessary to prepare a proper defense. In respondent's view, these disclosures and the outrages they reveal should suffice to end these proceedings.

There are different kinds of due process violations that can arise from improper governmental conduct. Two are relevant to the issues here. There are, on the one hand, violations that are unrelated to an accused's guilt or innocence -- *e.g.*, an unlawful search and seizure that produces otherwise sound evidence of guilt. But there are, on the other, violations that are directly related to the accused's guilt or innocence -- *e.g.*, those that occur when prosecutors ignore or suppress evidence that might exculpate the accused or aid him in establishing his innocence. Whatever view one takes concerning the relevance of the former, the presence of the latter cannot be ignored. The materials now made available make it clear that violations of the kind that cannot be ignored occurred in the post-acquittal investigations in this case.

Full consideration of these violations and their significance must be deferred to a later date. But the presence of these materials in the recently produced files makes it clear that respondent must now be allowed time to fully examine the materials provided and to pursue now inquiries that should have been pursued over the past four years, to the extent that remains possible. That will take time and resources, but issues of this kind are not issues that can properly be swept under the rug and ignored in the name of expedition and expediency.

2. FBI Agent Mazzella Lied About Mayor Stephen Clark. Christopher Mazzella was the supervisory agent in Miami who directed the FBI's investigation into the alleged disclosure to Mayor Clark. On June 1, 1988, during the hearings before the House subcommittee, FBI agent Mazzella was repeatedly asked whether the FBI had any information that called Mayor

Clark's credibility into question or that might have given the FBI leverage in inducing his cooperation against Judge Hastings. Two exchanges should suffice to illustrate the tenor of the questions and his responses:

> MR. EDWARDS. I am sure you checked out carefully important witnesses in the FBI files?
> MR. MAZZELLA. Right.
> MR. EDWARDS. . . . [C]an you tell us, is it absolutely clean insofar as FBI files are concerned with Mayor Clark?
> MR. MAZZELLA. I can't make any representation of that from my point of view here without checking it further, but let me put it this way. There is nothing in his record or in any information we have that would tend to make me think he is lying.[2]
>
> ***
>
> MR. BRYANT. . . . One final question. You were well aware that people quite often want to be cooperative with the FBI in the event they are facing some type of trouble themselves. That is, prosecution or investigation or some other concern about what your intention towards them might be. I want to ask once again for you to make it clear to us, Mayor Clark's situation in that regard. *Did the FBI have any type of leverage at all over Mayor Clark at the time that he told you about Judge Hastings' disclosure to him?*
> MR. MAZZELLA. The only leverage we had were his own words on tape. Whatever that is worth. *There were no prosecutive -- no potential prosecution against him.* We didn't confront him with the possibility of other charges if he didn't cooperate. And their really, wasn't anything we had on him to convince him to testify truthfully.[3]

That was the sworn testimony of the FBI's supervisory agent on June 1, 1988.

The FBI materials produced on April 26, 1989, contain a telex dated March 3, 1986, from the Miami field office to FBI headquarters in Washington concerning the investigation. In explanation of its proposed strategy, the telex reports:

---

[2] *Impeachment Inquiry: Hearings* at 412.
[3] *Id.* at 416-17; emphasis supplied.

> On the other hand, Miami does not believe locking Clark into his testimony by way of Grand Jury appearance prior to consensual monitoring is necessary for the following reasons:
>
> . . .
>
> 2. The Department of Justice (DOJ) has already authorized the prosecution of Clark under Title 18, U.S.C., Section 1001 [making false, fictitious, or fraudulent statements]. Clark's testimony before a FJG could significantly impede prospects of such prosecution thereby eliminating a bargaining tool in seeking Clark's cooperation.
>
> . . .
>
> 4. DOJ is opposed to commiting [sic] Clark's testimony to FGJ record at this time because as mentioned early it could impede section 1001 prosecution. Further, DOJ wants Clark fully debriefed through more extensive interviews so that future trial testimony will not be flawed or contracted by inconsistencies derived from early FGJ testimony.

(A.12-13) There is little reason to expect that agent Mazzella's respect for an oath to tell the truth before a committee of the Senate will be any greater than that shown by the testimony he gave under oath before a subcommittee in the House. That, however, is beside the immediate point.

The House subcommittee should have provided counsel for Judge Hastings a copy of that telex before its hearings. That telex should have been before the members when they questioned agent Mazzella. At a minimum, the impeachment trial staff should have brought the telex to the subcommittee's attention during or soon after agent Mazzella testified.

The fact that none of these steps was taken establishes two points that are relevant here. The House managers can no longer suggest and the Impeachment Trial Committee cannot properly require that Judge Hastings's right to compel the production of documents be governed by determinations made by his accusers concerning what constitutes material that should be disclosed in the interests of justice. The fact that materials which may contain telexes such as the foregoing have been withheld to this late date renders that position untenable. Second, respondent must now be afforded adequate time to examine and analyze the materials that have now been produced (all 16,000 pages of them) as well as those that must be produced in the future, *before* his counsel are required to make decisions concerning stipulations or other matters that may affect the conduct of the trial and respondent's ability to defend himself.

3. The Decision to Arrest Borders at the Scene of the Payoff. At the 1983 trial and before the Investigating Committee, agent Murphy testified that a spontaneous concern for the undercover agent's safety was a significant factor in the decision to arrest Borders at the scene of the payoff rather than letting him take the money to determine whether funds would be paid to Judge Hastings. On the eve of the hearings before the House subcommittee last spring, we obtained a copy of an FBI telex dated October 8, 1981, which confirmed that the FBI had in fact planned in advance to arrest Borders at the scene and that the decision was based upon factors unrelated to concerns about the agent's safety.

The materials just produced reveal that the proposed arrest scenario had been developed by September 24, 1981, and was predicated upon Judge Hastings's issuing the *Romano* order by September 30, 1981, as Borders had promised (A.32-33). These materials confirm that Mr. Weingarten and Agent Murphy were aware that Borders was a rainmaker who had claimed to have the power to fix cases with judges in addition to Judge Hastings (A.18). Nonetheless, they were "dedicated to the prosecution" (A.22) even before the undercover operation had been approved (A15-26) ~~(A.33-36)~~. Those documents also show that Director Webster and other senior FBI officials were more skeptical from the outset (A.27, 30-31). They also indicate that the decision to arrest Borders at the scene of the payoff was predicated on the view that Borders's appearance there would generate more than enough evidence to warrant his prosecution, but that, absent further evidence, even the dinner at the Fontainebleau *and* the issuance of an order on September 30 would be insufficient evidence of the judge's involvement to warrant risking the $125,000 with Borders (A.34-37), a concern that even the committed prosecutor appears to have shared (A.35). Indeed, the Director's final approval of the arrest scenario was based upon the erroneous assumption that Judge Hastings *had issued* the order on September 30 (A.39-40). Even then the Director's approval was conditioned upon his subordinates obtaining the Justice Department's agreement that the arrest would take place at the scene (A.42). The *Romano* order was not issued by September 30th, the date Borders had promised, and the FBI had less, not more, evidence of the judge's involvement when the arrest was made.

5-19-89

Those materials also disclosed that a meeting took place three days before the arrest at which subordinate FBI officials and Justice Department attorneys involved in the investigation discussed the prospects for forcing reassignment of an important case pending before Judge Hastings. The Department's attorneys reportedly decided that that would not be feasible under the circumstances known at that date (A.43). This disclosure raises new and troubling issues concerning the "leaks" of information to the media that immediately followed the arrest, issues that must now be explored in some depth.

At a minimum, these materials shed new light on the credibility of agent Murphy's and Reid Weingarten's prior testimony. Their presence in these files should suffice to illustrate the need for a careful review of all materials in the FBI files on Operation Apple Eye.

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

May 19, 1989

COMMITTEE ACTION: Fourth Order

United States Senate
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
DISPOSITION OF PRETRIAL ISSUES
FOURTH ORDER

Upon consideration of the submissions of the parties and after hearing from them at the pretrial conference of May 18, 1989, the chair, in consultation with the vice chair, issues the following rulings on behalf of the committee:

Stipulations

Senate Resolution 480 of the 100th Congress, which was agreed to on September 30, 1988, requested the parties to work together to stipulate to evidentiary matters that are not in dispute and to report to the Senate on the stipulations to which they had agreed. On December 15, 1988, the House served proposed documentary and factual stipulations. On February 20, 1989, the parties reported to the Senate that they had reached no agreement on any stipulations.

On January 17, 1989, by which time it may have become apparent that a voluntary stipulation process would not be productive, the House proposed that the Senate "adopt a rule that would hold that any proposed stipulation of fact filed with the Senate by a party to this proceeding will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation of fact should not be taken as true." The House also requested that the Senate "adopt a parallel rule addressing the authenticity of documents, which would establish that any proposed stipulation regarding the admissibility of a document filed with the Senate by a party to this proceeding will be accepted as true unless the opposing party files a written objection, including a proffer as to why the proposed stipulation should not be taken as true." Response of the House of Representatives to the December 12, 1988 Letter from the Senate Committee on Rules and Administration, at 2-3.

On March 31, 1989, the House renewed its proposals on admissions concerning facts and documents, and resubmitted its stipulation of facts in revised form. In a filing with the committee on April 2, 1989, Judge Hastings stated his opposition to the House's proposals for stipulations prior to trial. A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial that is Fair to Respondent, at 31-32.

The committee heard oral argument by the parties on April 12, 1989, and issued its first order on pretrial issues on April 14, 1989. In that order, the committee adopted the House proposal that any proposed stipulation of fact be accepted as true unless the opposing party files an objection, including a proffer as to why the proposed stipulation should not be taken as true. A like rule was adopted for the stipulations as to documents. By its second order, dated April 21, 1989, the committee extended to May 17, 1989 the date for the filing of Judge Hastings' response to the House stipulations. The second order also extended until May 17, 1989, the date for Judge Hastings to file his own stipulations, which, like those of the House, would be accepted as true unless a specific objection was filed. Judge Hastings chose not to file his own stipulations.

Judge Hastings' Response to Stipulations Proposed by the House, which was received by telecopy on May 18, 1989, does not comport with the committee's order. Judge Hastings has in large part failed to respond to the stipulations proposed by the House. Although his response makes certain generalized objections, a few specific objections, and several generalized concessions, the committee in most cases is unable to determine Judge Hastings' position with respect to particular House stipulations. Instead, Judge Hastings, without having asked the committee to reconsider the April 14, 1989 order at any time between its issuance and the May 17, 1989 date for compliance, argues that he should not be required to take part in this process of identifying those matters that are not truly in contest. While the committee appreciates the inevitable burdens which these proceedings impose on all concerned, it believes that these burdens can best and most efficiently be discharged by complying with its orders, rather than by reiterating at length the difficulties of compliance.

The committee continues to believe that both parties as well as the Senate will benefit from a narrowing of the issues to those matters which are truly in dispute. The committee accordingly will review the stipulations proposed by the House and give careful consideration to any specific objections that it is able to identify in Judge Hastings' May 18, 1989 response and in any supplement that he may file to that response by June 1, 1989. Upon completion of its review, the committee will issue a ruling that sets forth the matters which shall be deemed to be found as true as a matter of record for purposes of the committee's evidentiary proceedings and its report to the Senate of matters that are not in dispute.

If Judge Hastings wishes to participate further in this process of distinguishing contested from uncontested issues, he may submit an additional response to the House's proposed stipulations on or before June 1, 1989. That response shall set forth for each proposed fact and each document his specific objection, or lack of objection, to each particular stipulation. In so doing, Judge Hastings should respond to each factual and documentary stipulation proposed by the House: for example, that a particular document is authentic or is a business or public record, or that a particular fact is true. He need not address whether a particular document or fact is relevant and admissible in evidence.

Although the House has referred to its "proposed stipulation[s] regarding the admissibility of a document," see page 2 supra, we agree with both parties that documentary admissions need go no further than the genuineness of the documents and, for those categories specifically identified by the House, their status as records of regularly conducted activities or public records, see Proposed Stipulations of Documents, filed December 15, 1988, at 1. Admissions concerning facts also need go only to their truth and not to their relevance.

Depositions

By its April 14, 1989 order, the committee advised Judge Hastings that it would consider his request to take pretrial depositions if he provided a list of, and certain information concerning, his proposed deponents. Judge Hastings responded with a Request for Specific Depositions, filed on May 10, 1989, in which he asked that subpoenas be issued for sixteen individuals. The House, on May 16, 1989, filed a request for the issuance of deposition subpoenas, naming three individuals.

In ruling upon these requests, unprecedented in the context of an impeachment proceeding, the committee has been guided by whether a strong showing of need has been made. In particular, the committee has considered, first, whether or not there has been an adequate showing that the deposition could ascertain relevant evidence, and second, whether or not the parties already have a sufficient basis for trial preparation in any previous testimony by a proposed deponent.

For persons whom Judge Hastings designates as "Participants in Borders's Scheme," the committee declines to issue the requested subpoenas for Rebecca Sutton Nesline and Peter Chaconas. No showing has been made that either Rebecca Sutton Nesline or Peter Chaconas has knowledge of any matter relevant to the Articles of Impeachment. With respect to Joseph Nesline, before deciding whether a threshold showing has been made which might justify the issuance of a subpoena, the committee requests that the House make available to the committee the information in the House's possession concerning Mr. Nesline's competency as a witness.

The committee will grant Judge Hastings' request for the issuance of a subpoena to William Dredge for pretrial testimony. Although Mr. Dredge's testimony before the Eleventh Circuit Investigating Committee is available to Judge Hastings' counsel, the committee has decided to permit a pretrial examination of Mr. Dredge because Judge Hastings has argued that Mr. Dredge's testimony may be especially central to his defense. The committee requests that the parties confer with each other on arrangements for a pretrial examination of Mr. Dredge and that they advise the committee about available dates for that examination so that a subpoena may be issued for a suitable time.

Concerning the FBI and Justice Department officials for whom Judge Hastings requests the issuance of deposition subpoenas, Judge Hastings is ordered, on or before June 1, 1989, to provide the committee with a list of the three individuals, in order of priority, whom he deems most important to depose. In compiling that list, he should be mindful of whether or not he has access to the individual's prior testimony. He should also furnish to the committee at that time any supporting information, including documentation, which supports his claim that these persons possess knowledge relevant to the Articles of Impeachment, and shows that he is in fact unable to obtain information voluntarily from those persons. The committee will then determine whether it will issue subpoenas for their pretrial examination.

With respect to the House requests, the committee declines to issue subpoenas for Marilyn Carter and Alan G. Ehrlich, both of whom have given previous testimony which is available to the House for its trial preparation. In contrast to Mr. Dredge, whose pretrial examination we will allow, there is no indication that either of these witnesses is sufficiently central to these proceedings to warrant the issuance of subpoenas for their pretrial examination. The committee has decided that a subpoena shall issue for Joanne Tyson Colt, who was a law clerk in Judge Hastings' chambers in October of 1981, who has never previously testified, and who has refused to be interviewed by the House. The requested subpoena shall issue for her pretrial testimony after counsel for the parties have advised the committee about available dates for Ms. Colt's pretrial examination.

Conduct of Evidentiary Hearings

Pursuant to the committee's second pretrial order, issued on April 21, 1989, the committee heard from the parties at the May 18, 1989 pretrial conference on various proposals concerning the conduct of the evidentiary hearings which shall begin on July 10, 1989. To the extent that Judge Hastings' submissions to the committee should be understood to be a request to postpone those hearings, that request is denied.

One of the issues that the parties addressed, at the committee's request, was whether the evidentiary proceedings should be bifurcated to permit the taking of each party's evidence first on the bribery and perjury articles and second, after receiving all the evidence on those matters, on the wiretap disclosure article. Judge Hastings objects to bifurcation because it would require him, if he testifies, to divide his testimony into two parts. We will respect Judge Hastings' objection and will not bifurcate the evidentiary hearings. The committee will accommodate the interest of the House in deferring, if it so wishes, the portion of its opening statement on the wiretap disclosure issue to the point in the presentation of its evidence when it is prepared to present its case on that issue.

At the May 18, 1989 conference, the parties also briefly discussed whether it would be appropriate to permit introduction of prior testimony, taken in United States v. Borders, United States v. Hastings, and before the Eleventh Circuit Investigating Committee, in place of taking live testimony before this committee. The committee believes that the use of such prior recorded testimony is desirable in certain circumstances, particularly, for example, where the testimony is not that of a key witness whose credibility is at issue, and encourages its use consonant with fairness to the parties and the development of a coherent record for use by the Senate.

Accordingly, both parties are directed to file and serve, no later than June 14, 1989, an identification of the prior testimony which, to the best of their knowledge, they in fact intend to offer into evidence. That identification shall: (1) specify the proceedings from which the proffered testimony is drawn, (2) append a copy of the proffered testimony, and (3) briefly state why the party believes that it would be appropriate to submit that particular testimony by way of prior recorded testimony rather than through a live witness. Each party shall in its pretrial statement on

June 21, 1989, state, for each such proffer of prior testimony by the opposing party, whether or not it objects to introduction of that prior testimony and, if so, the specific nature of its objections.

The parties were also invited to suggest ways in which the evidentiary proceedings could be structured to permit the taking of evidence within a three-week period of time. In response, the House suggested that the committee adopt the procedure, used by United States District Judge Pierre Laval in the Westmoreland v. CBS defamation case, of dividing a predetermined number of hours between the parties, leaving each side free to determine how its case can best be presented within the available time. Judge Hastings has not responded to the particulars of the House proposal or offered any specific proposals of his own.

The committee believes that guidelines, fairly and flexibly applied, must be adopted to facilitate realistic trial preparation and to enable the Senate and the parties to focus on matters that will be important to the Senate's disposition of the Articles of Impeachment. In framing their final pretrial statements, due on June 21, 1989, and in preparing for the evidentiary proceedings which will commence on July 10, 1989, the parties should operate within guidelines premised on the availability of eighty trial hours during the course of three weeks of hearings. Reserving several hours for miscellaneous matters, the parties should anticipate that they will each have thirty-eight hours in which to present their evidence on all matters, dividing their time as each sees fit between direct and cross-examination. In addition, each party may present an opening statement of no longer than one hour, which, if either party wishes, may be divided into two portions.

The parties should address in their final pretrial statements of June 21, 1989, and be prepared to discuss at the pretrial conference on June 22, 1989, the amount of time which they intend to allocate to direct testimony, whether by prior or live testimony, and whether their preparation has shown that some modification of these guidelines is necessary. The committee is mindful that the foregoing guidelines may need adjustment, both before commencement of the evidentiary proceedings and in the course of those proceedings, and that there must, and will, be flexibility in their application.

An additional order providing further details about the required content of the final pretrial statements will be issued shortly.

Jeff Bingaman

Jeff Bingaman
Chairman

Arlen Specter

Arlen Specter
Vice Chairman

May 24, 1989

PRETRIAL FILINGS (continued)

XXIV. STIPULATIONS (continued)

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

COMPLETED AND CORRECTED RESPONSE TO STIPULATIONS PROPOSED BY THE HOUSE[1]

On April 26, 1989, respondent received materials that provide substantial corroboration for the claims he has made throughout. The Justice Department and the FBI did know from the outset that William Borders was a rainmaker who made unfounded claims that he had the power to fix cases before other judges. The prosecutors and the FBI did make false and misleading statements in their attempts to secure respondent's conviction and, later, his impeachment. Inquiries that were generating evidence that might have exonerated Judge Hastings completely were terminated, and evidence that supported his innocence was kept out of the record and was withheld from him.

---

[1] This *Completed and Corrected Response to Stipulations Proposed by the House* supplements and supersedes the preliminary Response dated May 17, 1989, and is submitted in accordance with the schedule set out in the Impeachment Trial Committee order dated May 24, 1989 (the "Fourth Order").

Those disclosures require that the Impeachment Trial Committee reassess the schedule it initially established and that it act now to assure that respondent is afforded time and resources to pursue the inquiries that the House should have pursued to generate evidence necessary to establish his innocence. On the record now available, concern for expedition can no longer justify the Senate's denying an acquitted Judge Hastings time and discovery before trial at least comparable to that which the House afforded a convicted and incarcerated Judge Nixon before impeachment. The necessary time, resources, and discovery should have been and should be allowed *before* respondent was or is required to engage in a mandatory stipulation process with the House.[2]

Quite apart from these issues, it is clear that many of the stipulations proposed by the House managers were designed to advance a strategy that could only further impede respondent's defense without serving the purposes that the Impeachment Trial Committee articulated as a rationale for adopting the House's proposed procedure in its order dated April 14, 1989 (the "First Order"). The committee's order went further than even the House asked and compounded the unfairness by indicating respondent should take a position on admissibility at this stage.[3]

---

[2] Respondent shall honor the views expressed in the Fourth Order by submitting appropriate motion(s) to reconsider in addition to making his objections known through filings such as these in order that they may be fully preserved.

Simply stated, no party should be asked to take a position on the admissibility of a document unless the proponent of that document has (a) represented that it intends to offer the document in evidence at trial, and (b) made a proffer specifying the fact or facts of consequence to which it is or may become relevant in this litigation. Neither party should be required to engage in speculative and potentially meaningless exercises of the kind mandated by the committee's order concerning documents.

Somewhat different requirements should be imposed to prevent improper use of proposed stipulations of fact. Unless apparent, each proposed stipulation should include a proffer concerning relevance. More importantly, in view of the abuses evident in the managers' current proposed Revised Stipulation of Facts, the proponent of a proposed stipulation should be required to proffer some explanation demonstrating that the proposed stipulation, if agreed to, would in some degree simplify and shorten the presentation of evidence at trial. The managers' proposed stipulations do not satisfy any of these conditions.

---

[3] The Fourth Order deleted this further requirement and accordingly counsel for respondent has not further developed the points made in the preliminary Response in this corrected and completed version.

We illustrate these points below in some detail so that the committee may understand the flaws in the process mandated by its order. As the committee must in any event be aware, it took an unprecedented step when it prescribed a mandatory stipulation process in its initial order. Respondent has elsewhere expressed his principled objections to any process of that kind.[4] By the present submission, he seeks only to demonstrate to the committee the unintended and improper side-effects of the specific procedures it adopted here. Assuming time and resources are available, he remains willing to participate in a proper voluntary stipulation process that is designed to narrow the issues and conserve trial time in a manner that fairly allocates the burdens to the party best able to meet them. He submits, however, that the procedures embodied in the committee's order are inconsistent with this goal and that the extraordinary precedent that order would establish requires that those procedures be re-examined with care.

These points are developed and illustrated below in as much specificity as is feasible at this time. In order that the record may be clear and the committee may assess these points in light of respondent's concerns, however, we begin with a summary of the necessary background.[5]

---

[4] *See*, S. Rep. No. 1, 101st Cong., 1st Sess. at 104-06, 135, 143 (prepared testimony of Terence J. Anderson before Senate Rules Committee).

[5] One might fairly expect the prosecutors in any case to insist that the matter might be more easily resolved if the

I. INTRODUCTION

The case against respondent with respect to Articles I through XV is admittedly circumstantial. For seven years, respondent's accusers have gathered and subjected to microscopic examination a vast array of evidence concerning the events that preceded and followed Borders's arrest in 1981. From this array, those accusers have culled and organized evidence to establish a detailed account of those events which can be marshalled to establish a pattern consistent with respondent's guilt. In that context, the managers can fairly claim that the fifteen-volume Statement of Information disclosed the House's case and identified the evidence that would be offered to support it in considerable detail.

Ever since the Articles of Impeachment were exhibited in the Senate, the managers have sought a prompt and expedi-

---

accused simply rolled over and complied with their demands rather than making, persisting in, and preserving his objections. It becomes somewhat more troubling when the tribunal adopts a similar stance and makes clear its view that "the inevitable burdens which these proceedings impose on all concerned . . . can best and most efficiently be discharged by complying with its orders, rather than by reiterating at length the difficulties of compliance." Fourth Order at 3. Respondent had thought the oath every Senator took *"to do impartial justice in all things pertaining"* to this impeachment (emphasis supplied) better captured the correct standard. To the extent he and his counsel conclude that the demands of that standard conflict with the demands of orders entered to enable the prosecutors and the tribunal to discharge their burdens most efficiently, he will iterate and reiterate his views. Accordingly, to paraphrase the Miss Otis of ballad-fame, Judge Hastings regrets he is unable to be compliant today -- or in the foreseeable future. *See also, e.g., Hastings v. United States Senate*, Civ. No. 89-1602 (Gesell) (D.D.C. *complaint filed* June 1, 1989).

ent trial that would establish these circumstances in detail and confine respondent to presenting such explanations as were possible at this late date. The managers accurately perceived that, if they could present a mass of detail and marshall it into a sinister mosaic pointing toward guilt, it was unlikely that respondent would be able to generate, at this late date, evidence that would undermine the detail sufficiently to destroy the essential pattern established.[6]

The managers' proposed stipulations and their request that these stipulations be treated as requests for admissions were a crucial part of this strategy. The Proposed Stipulation of Documents identifies documents culled from the mass that bore some relationship to the mosaic which the House seeks to create. By the proposals for a mandatory response procedure, the managers sought to force respondent to take a position on each before his counsel had any opportunity to examine the materials he had sought through discovery. The proposed Stipulation of Facts (and the proposed Revised Stipulation of Facts) went further still. Through it, the managers seek to force respondent to stipulate to events taken out of context, many of which are simply excerpts from the documents. This may advance their strategical goals and might even enable the Impeachment Trial Committee and its recently funded staff to discharge their burdens more efficiently. It is not, however, a proper use of the stipulation process.

---

[6] The managers' strategical assessment has been corroborated by one of the more sophisticated of the judge-jurors who will hear the case. As early as January 1989, Senator Mitchell, the former federal judge who now serves as Majority Leader, wrote to a concerned citizen, assuring her that "Judge Hastings will have every opportunity to *disprove* the charges brought against him" (letter dated February 15, 1989 from Senator Mitchell to Gloria Collins) (emphasis supplied).

The House strategy was and is designed to prevent Judge Hastings from mounting an effective defense. There are in essence only two ways to defend against charges based upon circumstantial evidence. The first involves presenting testimony and other evidence that provide innocent explanations for the circumstances offered as evidence of guilt. The second involves presenting evidence to show affirmatively what really happened. Judge Hastings was forced to rely upon the first method at his 1983 trial because the government withheld from him material evidence necessary to enable him to present his rainmaking defense and to show that Borders was nothing more than a "rainmaker" who made unfounded claims about his power to fix judges other than Judge Hastings, claims that even the government was unwilling to take seriously. With the record of the trial and that defense before them, Judge Hastings's accusers have devoted more than five years to marshalling a more detailed presentation of the evidence and to establishing an unfavorable public perception of the accused in order to overwhelm any possibility that a similar defense might be marshalled, heard, and accepted in the political forum at this late date.

For more than seven years, however, respondent has been calling for investigations necessary to identify evidence that would show what really happened and establish his innocence. By January 1987, his counsel was able to specify the essential lines of inquiry that had to be pursued as part of this kind of investigation in considerable detail in the *Provisional Report.*[7] For more than seven years, respondent's calls have gone largely unheeded, and it now appears that his accusers acted affirmatively to obstruct or terminate investigations that promised to generate evidence establishing his innocence.[8]

It was not until April 26, 1989, that respondent's counsel first received materials confirming that Judge Hastings's claims were well-founded and demonstrating the lengths to which his accusers had gone to avoid or conceal evidence supporting those claims. The materials supplied on that date also demonstrated the need for further discovery to enable respondent to develop and prepare the line of defense that had been denied him throughout the past seven years, and his counsel promptly requested documents and depositions necessary to achieve that end.

---

[7] Anderson, *A Provisional and Preliminary Report on the Proceedings Against United States District Judge Alcee L. Hastings: 1981-1986* (*submitted* Jan. 16, 1987; *reissued* Nov. 1987); *reproduced in* Appendix III ("App. III") to *Impeachment Inquiry Hearings* conducted by House Criminal Justice Subcommittee.

[8] *See, e.g., A Statement Concerning Judge Hastings's Need for Time and Funds to do Now What the House Should Have Done Before Impeachment: Three Illustrations With Supporting Documentation* ("*Statement*") at 2-4 and references cited there.

We believe that the requirement that respondent engage in a mandatory stipulation process at this time is simply unfair. Respondent has only recently begun to receive, through discovery, materials that should have been included in the record and developed fully in the prior proceedings. Respondent has not been afforded either the time or the resources necessary to enable him to do the job properly now, and under the current schedule, the work could not be completed in any event.[9]

Moreover, the specific procedure mandated by the committee's order is unworkable. The managers' proposed Stipulation of Documents is not limited to those they intend to offer at trial, and it is clear that many cannot be offered and that the use of others will be contingent upon developments that occur at trial. Respondent cannot in any event be fairly required to take a position of the admissibility of these documents before the managers have been required to limit the proposal to documents they intend to offer and have made a proffer as to the relevance of each. In view of committee's articulated reasons for adopting a mandatory stipulation procedure, most of the facts set forth in the managers' proposed Revised Stipulation of Facts are unnecessary and improper subjects for such a procedure.

---

[9] The present schedule established by the Impeachment Trial Committee would allow an *acquitted* Judge Hastings less time and discovery before trial than the House allowed a *convicted* Judge Nixon before impeachment. *See* note 20 below. This is untenable, and the committee should so acknowledge.

II. THE NEED FOR TIME AND RESOURCES: QUESTIONS OF FAIRNESS THAT CAN NO LONGER BE IGNORED

A. The House Managers Hold An Unconscionable Advantage

1. The First Fully Funded Investigation. From July 20, 1981, until February 4, 1983, the Justice Department employed the services of at least two of its full-time employee-attorneys and the resources of the Federal Bureau of Investigation to investigate and develop evidence showing that respondent had been a knowing participant in one or more of Borders's corrupt schemes. For at least the first five months of that investigation, these attorneys also had and exercised the subpoena power of the grand jury to aid them in gathering evidence. It is now beyond dispute that they withheld from respondent evidence that was material to his defense. Nonetheless, they presented so much of the evidence as they thought likely to be effective and compelled respondent to present evidence in his defense at the 1983 trial, evidence that resulted in a jury verdict of acquittal.

2. The Second Fully Funded Investigation. From March 1983 until August 1986, an Investigating Committee (the "Investigating Committee") of the Judicial Council of the Eleventh Circuit (the "Council") sought to obtain evidence

that would strengthen the case for respondent's involvement in Borders's 1981 schemes and that would show that the explanations respondent provided at trial were false. To accomplish this mission, the Investigating Committee retained and compensated two lawyer-investigators and authorized one of these to bill for necessary services provided by his paralegals.[10] These investigators acquired the products of the prior FBI and grand jury investigations[11] and utilized the services of the FBI to a far greater extent than even respondent had suspected.[12]

The function of that investigation was to gather and marshall evidence *against* respondent. It is now clear that the Investigating Committee went further: It affirmatively directed that inquiries that might produce evidence should not be pursued.[13] From the available evidence, the lawyer-investigators presented witnesses and documents in order to compile a record that would *support* the Investigating Committee's conclusion that respondent should be impeached.

---

[10] *Impeachment Inquiry Hearings* at 285 (testimony of John Doar).

[11] *See Addendum A to First Request for Production of Documents and Other Tangible Material* (Hastings) (schedule of materials that were to be delivered to House Judiciary Committee special counsel pursuant to orders entered by the Judicial Council of Eleventh Circuit).

[12] *See* description of FBI files labeled "Request for Investigative Assistance by Chief Judge John C. Godbold, Eleventh Judicial Circuit, concerning U.S. District Judge Alcee L. Hastings" included in Appendix to *Statement*, *supra* note 8, at 1-4.

[13] Appendix to *Statement* at 7-8.

The record so compiled did not include evidence that might have confirmed respondent's innocence. The Investigating Committee called Borders, but made no effort to enforce its subpoena when he refused to testify. The Investigating Committee called Joseph Nesline, but made no effort to enforce its subpoena when he refused to testify.[14] The Investigating Committee persisted in this failure even after it was advised that Nesline had reported that Judge Hastings was an innocent victim of Borders's corrupt manipulations and that Nesline was still receiving letters from Borders in 1985. Indeed, the Investigating Committee advised the FBI that it was not interested in having this line of inquiry pursued.[15] The Allen file was not included in the record, and Mr. Allen was not examined about its significance, even though the Investigating Committee's chief counsel apparently had obtained access to it as well as to the FBI and Justice Department files.[16] Even with the support of the FBI, co-counsel, and a staff of paralegals, it took the principal lawyer-investigator more than 6200 hours to complete the task, 6200 hours for which he was paid $560,000 from public funds.[17]

---

[14] These assertions are based upon materials included in record compiled by the Investigating Committee as transmitted to the House. If desired, supporting extracts will be submitted as an appendix here.

[15] *See Statement* at 2-3 and materials cited.

[16] *See* Exhibit 2 at 3 appended to Addendum A, *supra* note 11.

[17] *Impeachment Inquiry Hearings* at 285 (testimony of John Doar).

3. The Third Fully Funded Investigation. From March 1987 until August 1988, the House took up the inquiry. The House Judiciary Committee retained a staff of four special counsel to aid in its work. These special counsel promptly acquired not only the record compiled by the Investigating Committee, but also voluminous other materials and work product compiled by counsel to the Investigating Committee and the FBI.[18] By May 1988, special counsel had compiled the evidence *against* Judge Hastings into a fifteen-volume Statement of Information that was later reproduced as a three-volume, 3000-page appendix to the record of the House Subcommittee hearings.[19]

The Statement of Information simply marshalled evidence in extraordinary detail that the House's special counsel thought supported the circumstantial case against respondent. It did not identify or include any information or evidence relevant to the Nesline-Dredge theory or to other factual issues supporting respondent's claim of innocence, even with respect to those issues which had been developed in the *Provisional Report*.

---

[18] *See* "Submission by House Managers, April 4, 1989, on Documents That House Has (or Has Not) Provided to Judge Hastings" at Pt. III ("Documents in House Files Not Made Available"); *compare* Addendum A, *supra* note 11 (schedule of Investigating Committee files examined) and Appendix to *Statement*, *supra* note 8, at 1-4 (inventory of FBI files examined).

[19] Appendix II to *Impeachment Inquiry Hearings*. The Statement of Information did *not* include materials bearing upon the wiretap disclosure allegations made in Article XVI. Those were compiled *after* the Articles of Impeachment were adopted and exhibited and were belatedly published in an 1189-page Appendix IV to *Impeachment Inquiry Hearings*. It includes materials not identified or received at the Subcommittee hearings. That volume, as the managers note, was delivered to counsel for respondent in February 1989 -- six months after the Articles of Impeachment were adopted. *See House Managers' Response to Respondent's May 10, 1989, Memorandum on Scheduling* at 5.

It is also now clear that the procedures established by the House subcommittee for its hearings served to conceal exculpatory evidence from Judge Hastings and to prevent him from acquiring or developing evidence in support of his defense. When the subcommittee chose to call John Doar and accept his testimony as to the thoroughness of the judicial investigation and the fairness of the resulting record, it assumed a burden of providing respondent with evidence of prior statements that were inconsistent with that testimony. Surely the materials showing that Mr. Doar instructed the FBI that the Investigating Committee did not want it to pursue Nesline's report that Judge Hastings was innocent fell into that category. So too, when supervisory agent Mazzella repeatedly assured the House subcommittee that the FBI had no leverage to induce Mayor Clark's cooperation, respondent's counsel should have immediately been given a copy of the FBI telex reporting that a Justice Department prosecution of the mayor was pending in March 1986 for use during cross-examination. None of this was done, and the witnesses through whom respondent's counsel might have generated similar information were not called.[20]

---

[20] The managers' explanations concerning this latter failure should be reassessed in light of the procedures followed in the recently completed inquiry concerning Judge Nixon. Judge Nixon was convicted of two counts of perjury and sentenced to five years imprisonment in 1986. His rights to seek direct review were exhausted by January 1988, and he entered prison shortly thereafter. An impeachment resolution was introduced in the House, and the subcommittee assigned responsibility for the conduct of that inquiry began its hearings on June 9, 1988. In response to Judge Nixon's claims of prosecutorial manipulation of the evidence, however, that House subcommittee suspended its hearings until Judge Nixon had had an opportunity to explore and develop evidence in support of his claims in post-conviction hearings before the courts. As a result, the subcommittee's hearings were not finally completed until earlier this year, and Judge Nixon was not impeached until May 1989 -- eleven months after the hearings began.

A convicted Judge Nixon has thus been allowed a substantial period and access to the discovery procedures of the federal courts to explore and develop such evidence as was available to support his claim that his conviction was obtained through improper manipulation of testimony by the prosecution *prior to impeachment*. These rights were accorded the *convicted* judge, notwithstanding the fact that he was and remains incarcerated and wholly unavailable for service in his court. The House denied these rights to an *acquitted* Judge Hastings, notwithstanding the fact that it had access to FBI materials showing that his claims had a substantial basis in fact and notwithstanding the fact that he remained an active judge carrying a full caseload throughout its inquiry.

Under the schedule established by the Impeachment Trial Committee's first two orders in this case the acquitted Judge Hastings would be forever denied the rights accorded the convicted Judge Nixon. In our view, this is not a circumstance this committee can fairly tolerate. We would also ask that the committee consider the fact that Judge Nixon was accorded those rights, notwithstanding the time necessarily required, even though he was incarcerated and thus incapable of performing any services for his court. A concern that the matter should be expeditiously tried so that Judge Hastings may return to full service or a successor be appointed may be a legitimate concern. It is not, however, a concern that could justify denying him time and discovery to develop his defense before trial equivalent to that af-

4. The Second Fully Funded Prosecution. In August 1988, the House designated the four special counsel and the paralegal and secretarial staff they had assembled as an impeachment trial staff to aid its managers in preparing the case for trial and in representing the House in proceedings before the Senate. With that assistance and the record so compiled, the managers were able to generate the 19-page Schedule of Documents appended to their proposed Stipulation of Documents and a forty-three page proposed Stipulation of Facts, all by December 15, 1988. The bulk, form, purposes, and substance of these proposals are addressed below, but, given the resources available, the accomplishment is hardly remarkable.

What is remarkable is that the managers would make and persist in urging a mandatory stipulation process while they were withholding material necessary to enable respondent to prepare his defense. Had the managers prevailed on the latter issue, respondent might have been directed to respond before he received material confirming that his claims had been well-founded throughout. As matters now stand, the schedule requires that he respond to those proposed stipulations before his counsel has had a fair opportunity to review fully the materials recently disclosed or to pursue the discovery necessary to enable him to develop the evidence

---

forded a convicted and incarcerated judge before impeachment.

from which he could engage in the stipulation process from a position of parity.[21] This is simply not fair, and, in light of the recent disclosures, it should now be recognized as untenable.

B. The Time Now Required To Redress The Balance Cannot Fairly Be Attributed To Any Lack of Effort by Judge Hastings

1. The First Unfunded Defense. Between October 1981 and February 1983, respondent did not seek public funds to pay for his defense. Through funds contributed to his defense and from his own pocket together with services provided by lawyers who served without receiving payment for their services, he funded the preparation of his own defense.[22] He sought, but was denied access to, evidence that was material to his defense. He asserted early in the proceedings that the government had been biased and had manipulated the evidence and events throughout, but the trial court deferred his claims until after the trial. Following the acquittal, the court found it unnecessary to hear these claims.

---

[21] Respondent still has received no response to the requests for documents submitted to the Attorney General and to the Director of the FBI on May 3, 1989. His counsel raised the problem at the conference with the chair and vice-chair on May 19, 1989, and requested and was promised the committee's assistance in obtaining a response. Counsel has not been informed of any further developments as of this date.

[22] The burdens imposed upon respondent's resources in this phase were such that he asked and the trial court granted him limited *in forma pauperis* status so that he could be relieved of certain of the costs associated with the trial.

2. The Second Phase: Funds Denied. Promptly after the Investigating Committee was appointed in March 1983, respondent requested funds for his defense under the Federal Courts Improvement Act of 1982.[23] The Administrator of the United States Courts was advised that he could pay expenses incurred by the Investigating Committee, but not those requested by respondent, and respondent's request was denied. Over the succeeding three-and-a-half years, respondent attacked the constitutionality and the conduct of the Investigating Committee's proceedings in every forum that was open to him, again without support from public funds. When the Investigating Committee decided to commence its hearings in Atlanta before these challenges had been adjudicated, respondent filed his special appearance objecting to this premature exercise of jurisdiction in order to preserve his claims, but declined to otherwise participate.

As it turned out, the absence of funds would have likely precluded meaningful participation in any event. The Investigating Committee conducted hearings on twenty-nine days scattered over more than a year -- twenty-eight in Atlanta, Georgia,[24] and one in Columbia, South Carolina. That is how long it took the attorney-investigators just to present the testimony and documents thought necessary to compile an appropriate record *against* respondent. Effective participation more than doubled the time required. Respondent did not and does not have funds to support the travel, accommodations, and other costs such an effort would have entailed.[25]

---

[23] Pub. L. No. 97-164, § 116(a), 96 Stat. 32 (1982), *codified* at 28 U.S.C. § 463 (1982).

[24] The last two of these were *pro forma* hearings held without notice to respondent to receive additional documents after the Investigating Committee had submitted its report and recommendations to the Council.

Respondent's accusers declined to provide him with a copy of the record they had compiled, and his counsel was required to conduct such examinations as were feasible in sites approved by the Judicial Conference of the United States. Those examinations were, however, sufficient to enable his counsel to prepare the 169-page *Provisional Report* that identified inquiries that should have been, but were not, pursued and documents that should have been, but were not, made part of the record. The FBI materials recently produced confirm the essential accuracy of that report. The burdens of the litigation and of the examinations that produced the *Provisional Report* were borne by respondent and his counsel throughout this four-year second phase without support from public funds.

3. The Third Phase: Unfunded Still. The pattern continued throughout the year-long House inquiry. Respondent

---

[25] The problem is dramatically illustrated by the amounts the judiciary was required to expend to retain competent attorney-investigators ($625,000) and for the costs they incurred ($180-200,000) in aiding the Investigating Committee and the Counsel in their work. *See Impeachment Inquiry Hearings* at 285 (testimony of John Doar).

made clear at the outset that the lines of inquiry identified in the *Provisional Report* would have to be pursued if the inquiry were to be complete.[26] He sought a role for his counsel to assure that these lines were explored before any hearings were scheduled, but his requests were rebuffed.[27] And unlike the Watergate inquiry (or, indeed, any inquiry into the conduct of a political officer of the executive branch), there was no minority counsel retained to assure the inquiry was in fact complete and the resulting Statement of Information balanced and precise.[28] Instead, respondent was invited to participate in hearings after the Statement of Information had been distributed and in hearings at which his counsel were forbidden to object and only grudgingly conceded rationed rights to cross-examine witnesses.[29]

The House subcommittee also placed a premium on expedition and efficiency. The subcommittee only called three of the twenty-five witnesses its managers now claim are necessary to establish the accusations made in Article I through XV.[30] It declined to call any of the witnesses who might have enabled respondent to develop his defense to those articles, notwithstanding his persistent requests that his allegations be heard, requests dating back to 1981.[31] As a result, the record compiled and made available to respondent through August 8, 1988 included the mass of evidence that the House and its special counsel thought might be marshalled *against* him with respect to these articles.[32] Notwithstanding his diligent efforts, it included none of the evidence he had sought from the outset of the inquiry.

---

[26] Prior to the outset, respondent had petitioned the House and Senate to make provision to assure that he and other federal judges were properly reimbursed for attorney fees and other costs incurred in defending their conduct in office. *See The Petition of the Honorable Alcee L. Hastings, a United States District Judge, for Redress of Grievances and Other Legislative Relief* (Jan. 17, 1987) *reproduced in* App. III at 410-16. Neither house has acted on that petition. *Compare* letters reproduced in App. III at 31-38.

[27] The correspondence through which these requests were made and rebuffed are reproduced in App. III, at 31-48.

[28] This and other points were developed in a memorandum submitted to the House subcommittee at the outset of its hearings. See App. III at 1-30.

[29] *See id.* at 3-5, 24, 244-50; *see also Impeachment Inquiry Hearings* at 7-9, 183, 186, 223-24, 249.

4. The Second Defense: Unfunded to Date. Early in the proceedings before the Senate, respondent identified two conditions that had to be resolved if the proceedings were to approach a level of minimal fairness. He requested dis-

---

[30] The House subcommittee relied primarily on a hearsay account of the evidence that the Investigating Committee had compiled to support its allegations. *Impeachment Inquiry Hearings* at 15-133, 226-86. Of those now listed as necessary witnesses concerning these articles, it called only Hemphill Pride, II, *id.* at 133-51; William B. Murphy, Jr., *id.* at 309-48; and Roger Shuy, *id.* at 154-89.

[31] *See, e.g.,* App. III at 1-30 (raising concerns and reiterating issues that would have to be explored if inquiry were to be full, fair, and complete); 251-305 (developing concerns); 313-65 (post-hearing specification of defects and concerns remaining). These procedures should be contrasted with those observed at the hearings concerning *convicted* Judge Nixon.

[32] The House subcommittee marshalled its evidence against Judge Hastings concerning the article XVI after the hearings were complete and the House had voted. The staff added additional materials that had not been presented before or during the subcommittee hearings. See note 19, *supra*, and sources cited there.

covery so that he might obtain the documents that had been withheld (as opposed to those that had been heaped upon him), and he requested funds so that his counsel might devote the time and conduct the investigations necessary to represent him adequately and to prepare for trial. Both these requests had been submitted by September 19, 1988, and both were before the Senate Committee on Rules and Administration in January 1989, when it conducted its hearings on issues that had been deferred from the 100th Congress. These issues were again deferred pending disposition of respondent's motions to dismiss and the establishment of this committee.[33]

The proceedings that preceded the formation of this committee fully consumed the resources available to respondent throughout that period. The work required to address the issues identified by the Rules Committee, to prepare for its hearings, and to prepare and argue the motions to dismiss required almost all of the time respondent's counsel could allocate to the case during that period.

Under the schedule adopted by the committee, merely respondent's principal counsel has had to devote substantially all his available time to producing the documents required by that schedule. Prior to the present effort, these were all documents that advanced respondent's trial preparation and for that reason were assignments that counsel readily assumed. Nonetheless, the work required has left counsel with little time for work in other areas in which preparation is required.[34] Unless resources are provided and time allowed, that pattern will continue, and there will not be a trial, at least not one that is fair to respondent.[35]

---

[33] The memoranda raising these concerns were filed with the Rules Committee and were, in large measure, reproduced in its reports. See S. Rep. No. 542, 100th Cong., 2d Sess. and S. Rep. No. 1, 101st Cong., 1st Sess. Because these materials are available to the Impeachment Trial Committee as part of the Senate record, specific citations are omitted.

---

[34] For example, respondent's counsel has had neither time nor the paralegal assistance necessary to conduct an extensive examination of documents of the kind that the stipulations proposed by the House managers were designed to require. Quite apart from the absence of discovery materials, respondent did not have the resources necessary to enable his counsel to spend the time or incur the expense that would have been necessary to do this work prior to the establishment of this committee. The need for time is illustrated by the information disclosed in respondent's most recent submissions. Since April 26, 1989, the demands on counsel's time have permitted only a hasty and partial examination of the voluminous FBI materials supplied on that date. The limited examination has produced information of sufficient importance to require that respondent be afforded time sufficient to allow his counsel to complete the job.

[35] The Impeachment Trial Committee entered an order on May 17, 1989, that effectively precludes any provision of funds to enable respondent to defend himself at trial. Given the information that respondent had submitted, the effect of that order must be to restrict and burden respondent's ability to defend himself meaningfully in these proceedings. That effect may be consistent with the committee's stated desire that "the inevitable burdens which these proceedings impose on all concerned . . . [be] most efficiently discharged . . . ." (Fourth Order at 3). It is not consistent with the Impeacnment Trial Committee's conclusion and the Senate's determination that the committee properly needs the services of a paid administrator, two paid special counsel, two paid assistants, and proper support staff to discharge the "inevitable burdens" these proceedings impose upon it. Nor, respondent submits, is it consistent with the requirements of the Constitution or the demands of impartial justice. *See, e.g., Complaint for Declaratory and Injunctive Relief, Hastings v. Senate, supra note 5.*

III. THE COMMITTEE ORDERS IN CONTEXT

The use of a Rule XI committee necessarily undermines the protections traditionally accorded the accused by a trial before the full Senate in at least two ways. First, the accused is deprived of the right to command the undivided attention of the Senate as a body during his trial. In a trial before the full Senate, the legislative business is suspended. The demands and distractions incident to that business are eliminated, and the attention of those Senators who are interested and of the public are focused on one thing only -- the trial that constitutes the whole of the business before the Senate. Second, it deprives the accused of the right to obtain prompt and dispositive rulings on questions of evidence or other issues that arise during the trial. In a trial that is conducted before the full Senate, the accused is assured that the record will be compiled in an orderly way and will not include the extraneous materials that would be inadmissible under the rules of evidence as "strictly applied" in prior trials of impeachments before the full Senate.[36]

The use of a Rule XI committee must also undermine the rights of the accused in other significant ways. For example, in a trial before the full Senate, the accused and more importantly the public may observe and thus hold the members accountable for their attendance and attention to the evidence as it is presented in open court. The trial is not a side-show; it is the main event.

---

[36] These and the points that follow were developed in memoranda submitted to the Rules Committee which were reproduced in its reports. *See* note 33 *supra*.

In this context, the use of a Rule XI committee compounds the difficulties confronting an accused. Whatever the theoretical possibility, it is unlikely that any significant number of the Senators will study the evidence directly and in detail. The use of a Rule XI committee reduces and effectively eliminates the ability of the public to hold them accountable for the quantity or the quality of the study given. Moreover, the continuance of the legislative business eliminates time that would otherwise be available, and the absence of public accountability invites reliance on staff summaries and other secondary accounts.

Problems such as these require that such a committee act to assure that the record compiled replicates as closely as possible the record that would have been compiled had the case been conducted before the full Senate. They require that the parties be permitted to present evidence in an orderly sequence with the opportunity to present arguments concerning relevance and admissibility or other matters at the time the evidence is offered so that these issues may be readily understood by those who would study the record. They preclude the use of procedures, such as those common in the legislative process, under which any available materials may be submitted and compiled for later examination, analysis, and review as the matter proceeds through levels of staff, subcommittee, and committee review with the chaff being culled and the essence being presented in a final committee report.[37]

We understand the Senate's view that necessity dictates the use of a trial committee, notwithstanding the handicaps it imposes upon the rights of an accused.[38] We submit, however, that such a committee should weigh additional proposed procedural innovations carefully and should avoid those that might further undermine the protections that accused officials have traditionally enjoyed in the trial of impeachments.[39] In our view, the stipulation process prescribed, especially in light of the schedule adopted for its implementation and the views expressed concerning proper role of the rules of evidence in these proceedings, is inconsistent with this principle and with the requirements of fairness.[40]

---

[37] The decision of the Impeachment Trial Committee to delegate responsibility for deciding procedural issues to its chairman and vice-chairman and to retain special staff to aid it in its work established, in respondent's view, that the committee has indeed abandoned the long-established view that impeachments are judicial in nature in favor of a legislative process model under which the "inevitable burdens" such proceedings impose upon the Senate can be "most efficiently" discharged. This, in respondent's view, can be reconciled neither with the requirements of the Senate's rules or the Constitution, a point to be developed later and elsewhere. See below at 72-73.

[38] We also recognize that the view that the use of such a committee may generate some off-setting benefits is not without support. The enhanced responsibility imposed upon twelve members may well induce them to devote greater attention to mastering the record and the issues and thus create a class of twelve well-informed members whose views will command commensurate respect in the final deliberation. In respondent's view, the committee has recently acted to undermine any realistic possibility that even this modest benefit could be realized. *See* note 37 *supra*.

[39] We recognize that the committee has also adopted innovations that have conferred rights upon respondent by according him significant discovery, and that it has his requests for funds and for depositions under consideration. We appreciate the steps that have been taken, but we believe

The managers' proposal for a mandatory stipulation process was without precedent in the history of American impeachments insofar as counsel for respondent can determine. Quite apart from concerns such a step would raise in any event,[41] the schedule adopted by the committee compounds the

---

they were required by the specific situation created by the procedures employed in the House. Moreover, procedures that enhance the fairness of the proceedings to the accused can hardly ever be criticized and, given the handicaps created by the use of Rule XI committees, such compensating innovations as are feasible should be liberally implemented.

With respect to the requests that were or are still pending -- for funds and further discovery, the committee should also recall that constitutional standards have evolved considerably since the Ritter impeachment trial in 1936. The right to appointed counsel in criminal cases, the right to publicly funded counsel in some other kinds of cases, and the right to full discovery are all innovations that have been recognized and become established in the intervening half century.

[40] We also view the committee's observation that respondent had had four-and-a-half months to review these stipulations as a gratuitous insult to his counsel. Respondent's requests for funds and discovery had been pending for more than seven months. As the committee must be aware, the demands imposed by the schedules adopted by the Rules Committee, the Senate, and this committee had fully occupied the lawyer-time that could reasonably be made available for respondent's defense, and counsel's record of production is not one that merits the criticism implicit in the committee's order.

[41] Respondent early made clear and reiterates his view that such a procedure represented burden shifting of a kind that conflicts with the requirements of due process. *See* note 4, *supra*, and materials cited there. Notwithstanding the principled grounds for objection, he subsequently made clear his willingness to engage in *voluntary* stipulation negotiations once he had been afforded time and discovery suf-

concerns. That schedule would require that respondent commit himself to stipulations before his counsel had received and had an opportunity to examine the discovery which the committee has concluded is appropriate. Those decisions alone seem inconsistent with the principle that the committee should observe to assure that the use of a Rule XI committee does not impose additional and unnecessary burdens on the rights heretofore accorded respondents in impeachment trials. In light of the recent disclosures based upon production of the FBI materials, it should now be clear the schedule adopted cannot be fairly maintained in any event.

The committee's decisions to adopt the House's proposal and specify an early deadline did not, however, stand alone. The committee took a further step that even the managers had not sought. The committee's order would require respondent to also specify at this stage "why the proposed stipulation concerning each document should not be taken as true *and the particular document admitted into evidence.*" (Emphasis added.) That latter requirement would impose an impossible burden and reflects a fundamental misconception of the trial process, a misconception of a kind that has largely been avoided since it infected the impeachment trial of Sir Walter Raleigh in 1603.[42] These concerns can be more readily

---

ficient to enable his counsel to achieve a level of preparation comparable to that so long enjoyed by the managers.

[42] *Raleigh's Trial*, 2 How. St. Tr. 16 (1603).

understood and illustrated by an analysis of the proposed stipulations in light of the committee's orders.

IV. THE PROPOSED STIPULATION OF DOCUMENTS

The documents identified in the managers' Proposed Stipulation of Documents are voluminous, far more voluminous than those reproduced in the eight volumes that constitute the printed record of the impeachment inquiry conducted by the House subcommittee. For example, it includes the twenty-nine volumes of the record in *United States v. Hastings;* the six-volume transcript from the trial in *United States v. Borders;* the twelve-volume record on appeal in *United States v. Romano;* and the twenty-eight volume transcript of the proceedings before the Investigating Committee. Historians might be pleased if documents such as these were deemed admissible and admitted by this committee so they might be collected and bound in the record of this impeachment; the government printing office would not.

The managers recognized that many of these documents would not be admissible generally. Their impeachment trial staff advised that no decision had been made concerning those which would be offered in fact or for what purpose. Accordingly, the managers' proposal called only for stipulations that would eliminate unnecessary questions concerning the authenticity and genuineness of these documents and the requirement that witnesses be called to establish foundations to show that certain of these documents fell with the business records or official reports exceptions to the hearsay rule.

Even the House managers did not venture to suggest that respondent's counsel should examine each of these documents in advance of trial to identify other objections that might compel its exclusion. This is a task that a team of evidence professors might be able to accomplish with several months intense labor; but even then the result would only be provisional. Moreover, in meetings with Senate Legal Counsel pursuant to the Senate's order,[43] special counsel for the managers and counsel for respondent quickly agreed that each side should control the order in which documentary submissions were tendered at the evidentiary hearings.

Clearly, the managers were correct in their assessment that issues concerning general admissibility could not be resolved at this stage. For example, virtually all of the transcripts of prior testimony would constitute pure hearsay to the extent they were offered to prove the truth of matters asserted on a prior occasion. Putting aside questions that may arise concerning those that contain admissions or those that record testimony of a witness who is now unavailable, most of these transcripts will be useable, if at all, only for purposes of refreshing recollection or impeachment, and even then the extent of their use and whether they may be introduced as substantive evidence will raise difficult questions that neither the parties nor the committee could resolve in the abstract or in advance of trial.

---

[43] Senate Resolution 480, 100th Cong, 2d Sess. § 5 (Sept. 30, 1988).

This aspect of the Committee's order also reflects a fundamental misconception of the functions served by rules of evidence in adjudications. Those rules apply in cases that are tried to a judge as well as those tried to a jury. The nature of the process permits the parties to alert the judge to the improper effects that specific evidence may have at the time it is offered. Even though judges may apply the rules more liberally in deciding whether evidence should be admitted and considered in a bench trial, they do so with a full and timely awareness of the dangers and a sensitivity to the proper and improper use of any evidence that is identified as problematic.

For example, the transcript of the proceedings and the exhibits offered at respondent's 1983 trial will be offered as evidence at this trial. The testimony recorded on that occasion is hearsay and would not be admissible to prove the truth of the matters asserted by witnesses then. The record of that trial is, however, relevant to show (a) that the government had and exercised a full and fair opportunity to prove (i) that respondent was a participant in Borders's 1981 scheme and (ii) that respondent's testimony at that trial was false and misleading; (b) that the evidence offered then was not materially different from that offered by the managers here; and (c) that, far from being tainted, the jury's decision to acquit respondent was wholly rational and fully supported. That evidence would thus bear directly upon the weight that any Senator might choose to assign that verdict in determining how the accusations made by the House should be decided in this case.

The specific purposes for which evidence such as this is offered should be specified at the time it is offered. The adverse party should be afforded an opportunity to object and to present arguments concerning limitations on its use that should be observed if it is admitted. The record should reflect these arguments and the ruling at this point. The use of a Rule XI Committee enhances the need to afford such opportunities in order that those Senators who view the tapes or study the printed record may understand the purposes for which and context in which significant documentary evidence was presented at trial.

The process prescribed in the committee's order could only create problems of this and other kinds. The magnitude and extent of some of those problems can be further illustrated in the context of the specific categories in which the House managers classified the documents in the schedule appended to their Proposed Stipulation of Documents.[44]

---

[44] The managers' Schedule of Documents contains references to pages in the Statement of Information prepared by their special counsel at which partial or complete copies of the documents are reproduced. Counsel for respondent has not construed the proposed stipulation as covering either the

A. Telephone Records

The House managers have specified long-distance billing records for eight subscribers for periods ranging from one to thirty-three months. (Items A.1-7 and A.9-12) In the aggregate, the sheer bulk of these records is impressive. The managers' staff have provided counsel for respondent with a marked copy of that schedule specifying whether the House is relying upon an original, a duplicate original, or a copy of these and other records identified in that schedule. Subject to an examination of the authenticating certificates for originals and duplicate originals and affidavits sufficient to establish the chain of custody for copies and to explain the absence of the originals, respondent would not anticipate challenging the genuineness of any of these telephone bills.

Respondent understands that under the business system employed by the telephone companies in the Bell System that issued most of these bills, long-distance calls were recorded and billed in units of one minute. This is a matter of some importance in this case because many of the entries the House has indicated may be relevant were recorded and billed as calls of one (1) minute. No inference could

---

references or the copies to which they refer. He will insist that the original and complete document (or a copy satisfying the essential requirements of the best evidence rule) be produced at trial and that copies of those that are admitted be included in the record of the evidence of this case.

fairly be drawn from such entries other than an inference that a connection was completed, no matter how brief. Indeed, the most probable inference would appear to be that no substantive conversation occurred and that the caller did not reach the person called. So long as the House managers are prepared to stipulate that this was the billing practice employed by those telephone companies during the periods covered by these long-distance bills, respondent is prepared to accept the fact that these records were maintained in the ordinary course of those companies' businesses.

There are two sets of documents among these items that present further problems. There are a set of long-distance billing records in the name of Howard Schlosser (item A.4) that the House managers designate as bills for the residence of William Dredge. Although such subterfuge is consistent with Dredge's background, the circumstances of this discrepancy and its significance have not been developed adequately in the records which counsel for respondent has been able to examine. Accordingly, absent competent evidence, respondent objects to the proposed inference that telephone records billed in the name of Howard Schlosser were records for the residence of William Dredge. (The proof necessary to establish a proper foundation should pose small difficulty, however, because Dredge now appears on the preliminary witness lists for both parties.)

Telephone bills for the nine numbers in Judge Hastings's chambers (item A.3) also create special problems. These telephones were connected to the Federal Telecommunications Systems, and the circumstances in which calls were specifically billed and the completeness of the resulting record is not adequately established in the records which counsel for respondent has been able to examine. Counsel for respondent has requested that the Council produce the "Confidential Memorandum re: Telephone System in Judge Hastings' Miami Chambers" and its counterparts for his Fort Lauderdale chambers.[45] Absent production of these memoranda or other information sufficient to enable counsel to prepare stipulations concerning the record-keeping system under which these records were maintained, respondent will require that the necessary foundation for admissibility be developed at trial.

So long as any alterations are properly accounted for, respondent would not anticipate challenging the authenticity and genuineness of the telephone logs maintained in the law offices of Cobb, Borders, and Williams (item A.8). The practice observed in maintaining these records, however, requires explanation. The House managers have included Cynthia Rogers on their preliminary list of witnesses. After

---

[45] Items 3.e. 14 and 15 in Exhibit I appended to the Council's order dated September 25, 1987, authorizing disclosure to the House, a copy of which was appended to respondent's letter request to the Council dated April 26, 1989.

Ms. Rogers has provided the testimony necessary to make these records understandable, counsel for respondent does not anticipate objecting to their admissibility on hearsay grounds.

Counsel for respondent does reserve the right and does intend to object to the admission of records included in these items (A.1-12) on grounds of relevance, incompleteness, and improper prejudicial effects that substantially outweigh any probative value with respect to facts of consequence in this case. These objections will primarily concern the use of billing records for telephones to which respondent or Borders had access and to the telephone logs for Borders's law office for periods prior to September 1981. Counsel for respondent develops the bases that are likely to require such objections and the analysis likely to be advanced at trial in some detail here. The speculative essay that follows should illustrate why the committee must, in fairness, require that the *proponent* of a document (a) represent that it will be offered at trial and (b) proffer the purpose for which it is claimed to be relevant *before* the opposing party is called upon to specify the grounds for objecting to its admission or seeking limitations on its use as part of a stipulation process.

Although the committee's order did not require the managers to make any proffer as to the relevance of these documents, counsel for respondent anticipates that many of the telephone records may be offered under a claim that they would be relevant to the "pattern of contacts" theory advanced in the Report of the House Judiciary Committee.[46] Their use for that purpose poses problems of a kind that are likely to permeate this case and that should cause the committee some concern.

As counsel for respondent understands the theory, the House may offer these records and records from the *Romano* case to show that, between January and August 1981, calls were placed from telephones to which Judge Hastings had access to telephones to which Borders had access on or near dates on which proceedings in the *Romano* case took place. As we understand the theory, the managers would invite the Senate to infer, with no other evidence bearing on the claim, that Judge Hastings spoke with Borders on those dates and that they spoke about the *Romano* case and a scheme to extract a bribe from the Romano brothers. Using the available long-distance records for this purpose would be impermissible for at least five related reasons.

First, it would require the Senate to pile inference upon inference in most instances. The fact that the telephone records reflect a charge clearly supports an inference that a call was made from one number to the other. The inference from this fact to the conclusion that Judge Hastings placed the call and spoke with Borders is more problematic. Judge Hastings lived with his mother and Borders lived with his mother. For calls charged to residence telephones, there are four possible combinations, only one of which involves a contact between the judge and Borders. The problem is compounded with respect to calls between the judge's chambers and Borders's law offices. Judge Hastings was also friends with James Cobb, another former National Bar Association President, and Dudley Williams, both of whom practiced with Borders. And of course, Judge Hastings's clerks and other members of his staff had access to his chambers telephones. Nonetheless, the relationships between the judge and Borders at that time and their respective positions in the National Bar Association strengthens the basis for a second-stage inference that on most of the dates, if a telephone conversation took place, it was between these two men.

---

[46] *Impeachment of Judge Alcee L. Hastings*, H. Rep. 810, 100th Cong., 2d Sess. at 27-28.

The third-stage inference, however, that the topic they discussed was soliciting a bribe from the Romanos, would require a leap of fantasy and is significantly undermined by the fact that the relationships between the two men would have justified and required regular communication between the two on other topics throughout this period. For example, Borders was the then President of the National Bar Association, and Judge Hastings was active in the association and a prominent member of its Judicial Council. The two men would have had to discuss NBA matters in which both were involved.[47] The extended chain of inferences necessary to reach this last step and apparent alternative explanations largely destroy the probative value of these records for the assumed purpose.

Second, many of the entries upon which the House Committee Report relied are clearly irrelevant. What inference can be drawn from an entry evidencing a call of one minute or less? The most plausible inference is that the caller did *not* reach the person sought and only left a message. So too, messages from Judge Hastings reflected in the telephone logs in Borders's office establish that the two men did *not* talk at that time. In the absence of other entries showing a longer, contemporaneous subsequent communication between these numbers, there is no basis for inferring any communication on any topic between the two men on or near the date of a one-minute entry or an entry in a message log. The fact that the House Committee Report relied upon inferences based upon such data should sufficiently establish that the admission of such data here would create an unacceptable risk of confusion and improper prejudice, even among judge-jurors as sophisticated as those who sit in the Senate. This data would have to be excluded in any event.

Third, the records compiled are incomplete. The Chesapeake and Potomac Telephone Company had a two-year record retention policy. By the time the Investigating Committee issued the necessary subpoenas for records for telephones to which Borders had access, the records for 1981 had apparently been discarded or destroyed. All that remained were those that had been gathered by the prosecutors in preparation for trial. The Southern Bell Telephone Company, in contrast, apparently had a policy of unlimited record retention, and the Investigating Committee obtained bills for telephones to which Judge Hastings had access as far back as 1979.

---

[47] *See, e.g.*, *Provisional Report* at 52-64 (for a recount of 1981 events that would have required or justified communication between the two men).

The resulting gaps preclude use of the early billing records for telephones to which respondent had access. In the absence of billing records covering the same periods for telephones to which Borders had access, records for telephones to which respondent had access could only be used to create an unfair and almost certainly inaccurate bias. Use of records showing only communications from telephones to which respondent had access would create an impression that respondent was initiating all contacts, when in fact he may, and on some occasions almost certainly was, responding to calls from Washington through which Borders or others had initiated the effort to establish contact. The probative value of the records that remain is thus reduced, and the potential for confusion and unfair prejudice is enhanced. It is simply improper to proffer records that are incomplete and one-sided as a basis from which the judge-jurors will be asked to infer a pattern of contacts and the causes of those contacts, especially when there is no corroborative evidence.

Fourth, the lapse of time increases the unfair prejudice that would result from the use of these records in this case. Complete records on both sides were available when the government conducted its initial investigation. Respondent cannot be charged with the delay that resulted in their destruction. More importantly, the lapse of almost eight years impermissibly handicaps any fair effort to reconstruct and obtain evidence concerning the true purpose and meaning of these contacts.

Fifth, the use of attenuated evidence such as this will consume needless time and expand the issues and evidence that must be considered at trial beyond any possible justification. If these records were admitted, respondent would then have to be afforded the opportunity to introduce such evidence as is available concerning the other reasons that would have required contacts during this period. The *Provisional Report*[48] demonstrated that a pattern consistent with innocence can be reconstructed from such evidence as remains, as even the House Judiciary Committee was forced to concede.[49] If the committee is truly concerned about ways in which trial time can be conserved without undermining the trial's fairness, it should eliminate marginal evidence such as these records from the case.

---

[48] at 52-64; *see also* App. III at 331-32 (for a concise summary).

[49] H. Rep. No. 810, *supra*, at 46.

These points could and will be developed, if in fact the House intends to offer these records for the purpose postulated here.[50] The summary analysis presented above is offered now merely to illustrate why the committee's unprecedented requirement that respondent address admissibility problems at this stage is unworkable. If those concerns are to be addressed in advance of trial, the committee must require the party seeking the stipulations to limit them to documents that will be offered at trial and to specify the purpose for which each will be offered. Then and only then can the adverse party be fairly required to identify and address the bases for objecting to its admissibility.

The remaining items in this category illustrate the same and other problems created by the unprecedented procedure the committee has adopted. The managers have, for example, included a floor plan for the ground floor of the United States Courthouse in the District of Columbia and subscriber information for a payphone located on that floor (items A. 13a and A. 13b). Respondent has no reason to question the authenticity, genuineness, or accuracy of these documents. The irrelevance and probative significance, even under the attenuated standards applied by the Investigating Committee and the House subcommittee, is not immediately apparent. Respondent reserves the right to object if and when these documents are offered in evidence.

---

[50] The managers' intent on this point remains unclear. The government gathered many (and could have gathered all) these records in 1981. Given the absence of independent evidence concerning contacts prior to September 10, 1981, it must have been apparent, even then, that the available evidence was insufficient to permit presentation of a "pattern of contacts" theory at trial. Respondent's counsel had assumed that the managers had recognized this when he saw the first preliminary witness list they submitted to the Rules Committee. It included no one who was competent to testify to events prior to July 1981. The subsequent addition of Messrs. Sonnett (the Romano's lawyer) and Dredge (the informant) suggests they may intend to offer evidence in support of this theory.

Respondent will make no stipulations concerning the L'Enfant Hotel Hobic printout (item A. 14) or the Chesapeake and Potomac Company computer records (item A. 15). The government offered the Hobic printout at trial as evidence that Judge Hastings had not made any long-distance calls from his hotel room on October 9, 1981. Judge Hastings was not able, on cross-examination, to explain why that record was incomplete. Nonetheless, the jury accepted his testimony as corroborated by other witnesses over the computer records. Closer examination has since revealed that the hotel's Hobic system recorded no long-distance calls from any of the hotel's 372 rooms during the crucial 76-minute period on October 9, 1981, and testimony concerning Hobic system failures and other concerns was presented to the Investigating Committee. The genuineness, accuracy, and reliability of these records are in dispute, and respondent reserves the right to object to their admissibility until a proper foundation has been established.

The remaining items in this category (items A. 16 and A. 17) are not evidence at all. They are lists prepared by respondent's accusers in contemplation of this litigation. The information they contain would only be relevant if the Impeachment Trial Committee permits respondent to challenge the motives and biases of those who prepared them -- a challenge which, under the committee's current orders, would not be permitted.

Counsel for respondent has presented this rather extended analysis of the telephone records identified in the managers' Proposed Stipulation of Documents simply to illustrate the nature of the difficulties that the procedures prescribed by the committee would create. He submits that the committee should reassess its procedures in this light and revise them to place the initial burdens where they belong. The managers should be required to identify the specific documents they in fact intend to offer and proffer the basis upon which they are claimed to be relevant. Then and only then can respondent be required to respond by addressing concerns that may affect the admissibility of each.

Counsel for respondent has not attempted to replicate this analysis for documents in the remaining categories. The points that follow simply identify major concerns that will have to be addressed.

B. Airline Records

The thirty-five items in this category included copies of computer-generated reservation and information records, airline tickets, and boarding passes. Some of the airline tickets have handwritten notations the origin and regularity of which cannot be readily assessed in the absence of testimony. The reservation records cannot be fathomed without extended explanation. The relevance of many of these items could only be assessed based on a specific proffer or in light of evidence that had gone before. All except those that relate to travel by Judge Hastings himself will require limiting rulings.

Respondent does not intend to challenge the genuineness of records in this class. He does reserve the right to insist that evidence accounting for handwritten alterations be presented. He reserves the right to object on grounds of relevance and improper prejudicial effect and to seek appropriate limiting rulings.

C. Hotel Records

Respondent does not intend to challenge the genuineness of any of these records, apart from requiring an account of the absence of originals and assurances concerning their integrity where copies are used. Because the specific record-keeping procedures employed at the L'Enfant Plaza Hotel in 1981 are in issue, he does insist that the proper foundation for records from that hotel (items C.7-C.10) be presented and subjected to cross-examination. He reserves the right to object to the relevance and probative value of records other than those for his own accommodations (item C.1, C.4-C.6).

D. Tape Recordings and Transcripts

The managers have recently supplied copies of the tapes identified in this category, and we understand that they only recently obtained the necessary originals for some. The procedures under which these tapes were made and copies reproduced will require explanation at trial in any event. Assuming a proper foundation is established, respondent does not intend to challenge the genuineness or authenticity of these tapes.

The relevance of many of these tapes is not apparent and, for some, the schedule of documents does not indicate whether a transcript has been prepared (*i.e.*, items D.26-D.54). Respondent reserves the right to object on grounds of relevance, improper effects, and hearsay.

The use of transcripts presents more difficult problems. Respondent has previously made clear his intention to object to evidence submitted through the House's linguistics expert.[51] Respondent will object to the use of his transcripts also. These (and all transcripts) represent hearsay. The use of transcripts of recordings is customarily limited at trial to that of an aid to the decision-maker. It is an essential part of the decision-making process that the judge-jurors listen to the tapes and form their own assessments of what was said and, given the tone, inflection, and content, what was intended. Transcripts reflect the translation and interpretation given by the transcriber.

---

[51] *See, e.g., A Further Memorandum on Pre-Trial and Trial Procedures for a Trial That Is Fair to Respondent* at 32-33 (March 31, 1989).

The problems are rather dramatically illustrated in the records of the proceedings that led to this impeachment. The recording of the conversation between Judge Hastings and Borders concerning "letters for Hemp" (item D.13) has been viewed as central throughout. At least four "official" transcripts of that call have been prepared, each by persons knowledgeable in the procedures required. No two of these transcripts are the same. That fact alone demonstrates the dangers in the use of transcripts, especially where there is a significant possibility that the transcript will be used as a substitute for listening to the recorded conversation. Judge Hastings will not stipulate to the accuracy of these transcripts and reserves the right to seek their exclusion from the record or procedures that will assure that they are not improperly used.

E. Other FBI and Government Documents

Each of the documents in this category is a hearsay account prepared by law enforcement officials who intended to prosecute Judge Hastings. None would be admissible to prove the truth of any matter adverse to respondent. Under appropriate circumstances, some may be properly used to refresh recollections or impeach testimony or for purposes favorable to respondent.

Respondent does not intend to challenge the fact that these are genuine documents maintained in the FBI files. Respondent's prior submissions make clear his view of the potential defects in the investigation. These defects permeate the records maintained during that investigation. Many of these and other FBI documents will be introduced by respondent to establish those claims. At this point, however, respondent reserves the right to object to their use for impermissible purposes. Absent a specific proffer by the managers, he is unable to respond further.

F. Court Documents and Opinions

Subject to physical examination of the item to be tendered, respondent does not intend to object on grounds of genuineness or authenticity to items in this category. Most of the voluminous material in this category will be inadmissible on grounds of relevance, lack of probative value, and hearsay. Absent identification of specific items or parts that will be proffered as evidence and a proffer as to the relevance of each, respondent cannot respond further at this time. He reserves the right to object and seek proper limiting rulings at the time any documents in this category or parts thereof are proffered.

G. Judicial Council of the Eleventh Circuit

Transcripts of testimony identified in this category may be available for use in refreshing recollection or for impeachment at trial. Unless and until the committee reverses its ruling concerning Judge Hastings's right to challenge the motive and basis of those who conducted these investigations, the remainder will not be admissible at trial. Respondent reserves the right to object to the use or admissibility of all material in this category. Absent a specific proffer by the managers, respondent cannot respond further at this time.

H. Memoranda

Each of the documents in this category is inadmissible hearsay, and respondent reserves the right to object on that ground. Three of the memoranda (items H.5-H.7) are protected by attorney-client or work-product privileges and were unlawfully obtained in violation of the privilege or of court order or both. Respondent reserves the right to object to their use by the managers on this ground also. The remainder cannot be used at trial for any purpose other than refreshing the author's recollection or impeaching the testimony he or she gives at trial. Respondent reserves the right to object on any ground that is proper at the time any document in this category is proffered or an attempt to use it is made.

I. Letters

Respondent has no objection to the admission of the letters identified as items I.1 or I.6. Each of the remaining letters would constitute inadmissible hearsay if offered to prove the truth of matters asserted therein, and their relevance or materiality as evidence of other matters is not apparent. Pending a specific proffer by the managers, respondent reserves the right to object on these grounds.

J. Miscellaneous

Respondent does not stipulate to the authenticity or genuineness of the document described as the "Appointment Book of William Borders" (item J.12). The claim that such a document existed was first made at the House subcommittee hearings in 1988, almost seven years after the FBI allegedly seized it. The foundation laid for the extract admitted there was inadequate, and the credibility of the source through who it was admitted, agent William Murphy, is in dispute. The document itself is hearsay and is, in any event, sufficiently ambiguous to require its exclusion in the absence of explanatory testimony. Time has not permitted counsel for respondent to determine whether the additional three boxes of documents supplied by the managers on April 24, 1988 contains a copy of the complete purported document. Respondent reserves the right to object to its admission on all grounds.

Respondent has no objection to genuineness or admission of properly certified copies of the records of the Supreme Court of South Carolina concerning the indefinite suspension of Hemphill Pride, II (items J.1-J.3); to the Invitation for Dinner Honoring William Borders (item J.9); to the MMAP Program Brochure and Floor Plan of the Hyatt Regency Hotel in Miami (items J.13 and J.14); or to the 1981 Calendar (item J.15).

The certification and Report of Proceedings by the Judicial Conference (items J.10 and J.11) and the *Impeachment Inquiry* (item J.16) are irrelevant hearsay in light of the committee ruling on the managers' motion *in limine*. To the extent transcripts included in the *Impeachment Inquiry* may be appropriately used to refresh recollection or for impeachment at trial, the unedited transcripts prepared by the certified reporters who recorded and transcribed that testimony would be required. Respondent reserves the right to so insist.

The remaining items require a specific proffer from the managers to enable respondent to respond fully. Jeffrey Miller is listed as a witness and can testify concerning his Personal File (item J.5), and its contents may then be used to refresh his recollection or impeach his testimony. Brian Duffy, the author of the *Miami Herald* article (item J.8), is listed as a witness. The article will be admissible for the non-hearsay purpose of establishing that there was an improper leak of confidential grand-jury information. The relevance of the remaining items for any legitimate purpose and of the foregoing for any purpose other than that specified is not apparent, and respondent reserves the right to object on grounds of relevance and hearsay to their use for such purposes.

V. REVISED PROPOSED STIPULATION OF FACTS

After a trial of the magnitude of the one required here, the court typically requires the parties to submit proposed findings of fact based upon the evidence that has been admitted. At this stage, counsel for each of the parties customarily undertake to isolate pieces of evidence, articulate the inferences they purportedly establish, and marshall these in a way that supports the conclusions urged. Through such submissions, facts that are not in dispute can be identified, and those that are can be subjected to appropriate debate and scrutiny. That process aids the fact-finder.

The managers seek to reverse the process here. Their proposed Revised Stipulation of Facts consist largely of requests that respondent stipulate to *inferences* that they would urge the Senate to draw from documents for which they have also sought stipulations and to extracts from those documents that they would like to isolate from their contexts and present in a manner that reinforces the conclusions they urge. This departure might have some merit if it were designed and intended to reduce the number of witnesses that might otherwise be called. It is not.

The departure is specially pernicious in the context of this case. The proposed Revised Stipulation of Facts could serve only two purposes. They would impose upon respondent the burden of debating inferences that may be drawn from the documentary record that the managers intend to offer before the offer is made and the relevance and admissibility of the specific documents are established. Such an exercise might aid the managers in refining their strategy, but it could do little to simplify the task of the committee. Moreover, it would require counsel for respondent to divert his time to matters more appropriately done *after* the hearings have been completed at a time when respondent's discovery is not complete and his preparation for trial has hardly begun.

These purposes are not consistent with the reasons that the committee gave as justification for taking the unprecedented step of prescribing a mandatory stipulation process in a case of impeachment. We object to the managers' proposed Revised Stipulation of Facts in their entirety on that ground. We request that the committee reconsider the procedure in this light.

We submit that, if the committee continues to believe that a stipulation procedure is merited, it should place the initial burden of justification where it belongs -- on the party proposing the stipulation. That party should be required to identify its basis for the proposed stipulation *and* to specify what testimony could be avoided or documentary evidence eliminated if the stipulation were accepted. We illustrate these concerns in the following discussions of the several categories of facts employed by the managers.

A. [I] Airline Records

The managers have requested stipulations as to the various airline records that they claim are relevant in their Proposed Stipulation of Documents. Respondent has, albeit under protest and only to the extent presently feasible, identified above problems that must be addressed in order to determine the admissibility of those records. Every one of the proposed stipulations of fact in this category is an inference drawn solely from documents the managers intend to present. They are not designed to conserve the committee's time. They are designed to impose a duplicative burden upon respondent and to foreclose objections he might otherwise make at trial.

Moreover, they include matters over which Judge Hastings has no direct knowledge and matters that would be subject to proper objection if advanced at trial. For example, the relevance of the fact that Borders took urgent steps to return to Washington on September 12, 1981 (¶¶ 61-72), to the case against Judge Hastings is not clear. The most plausible inferences are (a) that Borders had *not* met with Judge Hastings before Borders's first meeting with

Rico/Romano, the undercover agent, and (b) that Borders was rushing back because Borders wanted to deliver his invitation to dine at the Fontainebleau to an unsuspecting Judge Hastings personally so that Borders could enhance and better assess the prospect that his corrupt manipulation would work.

Counsel for respondent recognize that the foregoing argument is better suited for a post-trial memorandum than for a response to proposed stipulations. That, however, is precisely the point. Proposed stipulations of fact should be used to avoid the need for testimony, not to suggest inferences that may be drawn after trial in order to precipitate pre-trial debate over their meaning.

B. [II-III] Telephone Records and Messages and Hotel Records

The proposed stipulation of facts concerning telephone records simply seeks to avoid problems of the kind discussed at some length in section IV.A. above. The proposals in this category do not seek to conserve time at trial; they simply seek to impose the managers' formulation of the inferences to be drawn in advance of trial. As such, they invite a linguistic debate that can serve no proper purpose at this stage of the case. The following illustrations should suffice to confirm the point.

Respondent has made clear here and elsewhere the concerns that may be legitimately raised about the accuracy and completeness of the records generated by the Hobic system used at the L'Enfant Plaza Hotel on October 9, 1981. *No* long-distance calls were recorded from any room in the 372-room hotel during the crucial 76-minute period during which Judge Hastings learned of Borders's arrest and left the hotel to return to Miami. With full knowledge of the nature of the dispute, the House suggests that respondent stipulate:

> 171. The computer-generated record of all calls charged to rooms at the L'Enfant Plaza Hotel on October 9, 1981 *reflect that only one call was made* from the hotel to area code 305, which is the area code for south Florida. That call was made at "22:00" (10:00 p.m.), and was placed from a room other than the one occupied by Judge Hastings.

(Emphasis supplied.) The proposal concerning C & P's records (¶ 173) is similarly flawed. Neither is fair or acceptable.

Proposals such as these simply invite linguistic debate. If such proposals might in fact significantly reduce the quantity of evidence or the time required for its presentation at trial, there might be reason to pursue the exercise. That is not a purpose that can be achieved through the stipulations proposed by the managers here. There is no proper reason or justification for a requirement that the parties engage in debates such as these stipulations would require during the pre-trial phase of the case.

The managers' proposals in this category are also disingenuous in ways that should be noticed. The proposals clearly demonstrate that the managers understand that the only inference that can be directly made from an entry on a long-distance telephone bill was that "a call . . . was placed . . ." from one telephone to the other. (See, *e.g.*, ¶¶ 36, 38.) When it suits the House's convenience, however, the form changes. Thus the managers propose that respondent stipulate:

> 247. Patricia Williams had telephoned Eleanor Golar-Williams at her home on eleven occasions between April 14, 1979 and August 2, 1981.

This is simply untenable. Eleanor Golar-Williams is and was the *former* mother-in-law of Patricia Williams. She also is and was the *grandmother* of Patricia Williams's daughter. Although it is highly unlikely that anyone could recall the specific calls eight years after the fact, it is probable that many, if not most, of these calls were made by the granddaughter to her grandmother. The same or similarly improper inferences are proposed throughout. (*See, in particular,* ¶¶ 269, 280, 283, 285).

The managers' proposed stipulations concerning telephone messages and hotel records share these deficiencies. For example, after Ms. Rogers has testified and if and to the extent the telephone message pads are admitted as evidence, then and only then may the parties be called upon to take a position as to what inferences they support. The managers' here, as throughout, would like to isolate these records from their context and focus attention upon those which they believe aid their quest. The managers would carry the process further by seeking to establish matters that are almost certainly beyond the purview of human recall, including some which are beyond respondent's knowledge (*e.g.*, ¶ 275). The records, if admitted, will speak for themselves. Respondent reserves and will exercise his right to dispute the managers' proposed interpretation and inferences after the evidentiary hearings are complete.

These are not the kind of stipulations respondent could be fairly expected to accept. Because they duplicate matters covered by the documents and because there is no apparent connection between stipulations of this kind and conservation of time at trial, further response should not be required or pursued at this stage of the proceedings. Respondent objects to the proposals in these categories and to any use being made of them, not only on the foregoing grounds, but also on those developed below.

C. [V-IX] Court Decisions, Records, and Transcripts

"The document speaks for itself": That is the standard objection that precludes a party from offering unnecessary interpretations of matters shown by documents in evidence during evidentiary hearings. Those are matters saved for argument *after* the evidence is closed. By its proposed stipulations in these categories the House managers simply seek to avoid these established constraints and to present their interpretations of what they view as the relevant portions of the documents and so to invite respondent to join with them in those interpretations *before* evidentiary proceedings begin.

This is a transparent ploy to avoid well-established principles of trial practice. Proposals such as this bear no relation to the time that will be consumed in presenting evidence at trial and can serve no proper purpose. Respondent's counsel declines the managers' invitation and does and will object to all proposed stipulations of this kind. The records, if and to the extent admitted, will speak for themselves. Respondent reserves and will exercise his right to dispute the managers' proposed interpretations and inferences after the evidentiary hearings are complete. At that stage, respondent will marshall the evidence that has been admitted to support his contention that he was, is, has been, and will remain innocent of these pernicious accusations, notwithstanding the relentless efforts of his accusers to establish otherwise.

The House managers intersperse non-documentary proposals in their stipulations in this category. These share the defects noted above and illustrate further deficiencies that permeate the proposed stipulations and thus taint the procedures. Two illustrations should suffice to illustrate the problems further.

The managers propose that respondent stipulate:

> 208. Pursuant to the January 19, 1982 discovery order in *United States v. Hastings*, No. 81-596-Cr. ETG (S.D. Florida), *the* defense produced, on February 12, 1982, the documents it intended to introduce as evidence in chief at the trial.

(Emphasis supplied.) As the managers must be aware, all accounts of the meeting between Mr. Hirschhorn and the prosecuting attorneys are consistent. Mr. Hirschhorn told the prosecutors that this was the "first" production of documents that would be made and that additional productions were likely to follow. Mr. Hirschhorn did not represent that he was then producing all "the" documents the defense intended to introduce at trial, and the managers knew or should have known this when they proposed (and re-proposed) this stipulation.

Moreover, that proposed stipulation was one of a series by which the managers seek to isolate events and present and establish them in a misleading fashion before trial so that they might shift the burden of proving the context in which these events occurred to respondent or, alternatively, require him to proffer his case now so that they could properly deploy their staff to meet it.[52] This also is a point that merits development.

---

[52] Burden-shifting proposals take on an additional pernicious effect, one that even the managers could not have foreseen, in view of the Impeachment Trial Committee's decision to limit the time available for respondent to present testimony and evidence in his own behalf at the hearings.

As the managers' proposed stipulations note, Judge Hastings did indeed file a motion claiming that impeachment by the House and trial by the Senate must *precede* any exercise of prosecutorial discretion by the executive or jurisdiction by the courts to prosecute and try accusations that a federal judge has committed high crimes and misdemeanors in office (¶ 212). That motion was filed on February 1, 1982, as the initial motion filed in that case on behalf of the judge. As the managers fail to note, at the outset of that case, Judge Hastings was represented by a team of lawyers which included Mr. Mavrides, Ms. Williams, Mr. Hirschhorn, and numerous others, including the undersigned.[53] The managers also failed to include the fact that Judge Gignoux announced on February 17, 1982, at the time he denied the motion to dismiss, that he was (a) likely to stay the proceedings against Judge Hastings, if an appeal were taken, so that the significant issues raised could be properly considered on appeal and (b) likely to sever the case against Borders in order to protect his right to a speedy trial and to avoid potential prejudice that might result from a joint trial. The managers also fail to note that disputes had previously arisen between Mr. Hirschhorn and Mavrides as to how the case should be conducted. An appeal was taken. The case against respondent was stayed on March 2, 1981. It is events such as those *not* noted in the managers' proposed stipulations that are necessary to establish the context which led to Mr. Hirschhorn's withdrawal on the following day (¶ 211).

---

[53] *Compare* the misleading proposed stipulation ¶ 222.

There are further omissions that bear upon the problem at hand. The managers also fail to include any reference in their proposed stipulations to the fact that all proceedings in the district court, including the parties' discovery obligations, were stayed while Judge Hastings pursued his appeal and subsequent attempts to get rehearing. So too, they conveniently omit the fact that Mr. Mavrides was undergoing personal problems that resulted in a nervous breakdown and ultimately his disbarment. Similarly, their proposals do not refer (a) to the fact that Mr. Mavrides was using production of the draft letters as a bargaining chip in an attempt to induce the prosecutors to produce the informant Dredge or (b) to the fact that delays and jockeying such as this were so common that the prosecutors did not even seek a court order establishing a cut-off date for discovery until November 1982 or (c) to the fact that the draft letters were in fact produced by the cut-off date.

The list of omissions could be extended, but the foregoing account should suffice to make clear the improper nature of the managers' proposed stipulations. The managers' proposals here isolate and juxtapose the fact that (a) the draft letters for Hemp were not included in the first discovery production (¶ 209) with the fact (b) that Mr.

Hirschhorn withdrew shortly thereafter (¶ 211) with the purported fact (c) that Ms. Williams took over from Mr. Mavrides as principal counsel in late October 1982 (¶ 222) with the fact (d) that the draft letters for Hemp were not finally produced until December 1982 (¶ 220). These purported facts taken out of context may be simply marshalled to suggest a series of dark inferences supporting the House's view that the letters were fabricated after the fact and only produced after Messrs. Hirschhorn and Mavrides had abandoned the cause. Even a summary indication of the additional facts necessary to establish the context in which these events occurred, however, should suffice to illustrate that the claimed inferences are weak at best and probably untenable in any fair view of the events in context.

It is the burden of the House to prove facts such as these at trial, on its own time, so that respondent may exercise his right to cross-examine the witnesses to assure that the context in which events such as these occurred is clear and properly developed. It is emphatically *not* the burden of the respondent either to assume the whole burden of establishing the context during his case-in-chief or to engage in briefing exercises such as this to educate the managers concerning the problems in the House's case.

If the House had wanted such an education, its subcommittee might have called the witnesses necessary to establish these "claimed facts" during its hearings and permitted respondent's counsel to cross-examine them there. Had that been done, the House subcommittee might then have invited respondent to call at its hearings such further witnesses as were necessary to complete the record at its inquiry. That was what had been done in prior inquiries. Had those precedents been observed, it is unlikely that this case would be before the Senate. They were not, and it is.

The House subcommittee chose *not* to observe those precedents and, instead, to rely upon the hearsay accounts provided by the Investigating Committee's chief counsel and by the Statement of Information prepared by its own special counsel. The House subcommittee thus achieved the practical advantage of denying respondent the opportunity to set the evidence in context and develop his defense during the inquiry, and thus the advantage of assuring that the record it prepared was not cluttered with inconvenient detail or ambiguity. The House, perhaps unknowingly, ratified the decision when it adopted the articles of impeachment.[54]

The House managers now seek to capitalize on the unfair advantage they created by the manner in which they conducted the inquiry by forcing respondent either to accept their claims or to disclose in advance of trial that which they denied him the opportunity to present during their inquiry.

---

[54] Neither the hearings nor the record had been printed or distributed at the time the House Committee and the House voted, overwhelmingly, to adopt the articles proposed by the subcommittee.

That is simply outrageous, and the managers know it. The attractions of expediency provide no justification that would warrant rewarding their efforts to compound the unfairness now.

One of the unprecedented functions assigned to the Impeachment Trial Committee was to report facts which were uncontested. The Senate did not and could have delegated to it, however, the authority to establish procedures through which "uncontested facts" might be manufactured. The mandatory stipulation process is nothing more than an attempt by House managers to induce the committee to create a procedure through which the committee might arrogate unto itself the power to make factual determinations before trial. That is not a power that the courts have in either civil or criminal case, and it certainly is not a power the Senate could have or did delegate to this committee. Judge Hastings rejects all the House's proposed stipulations in these categories and reserves the right to marshall the facts shown by the evidence properly admitted at the evidentiary hearings in this case and to insist that the Senate base its decision upon the record so compiled.

D. [X] Geographical Information

Four of the five proposed stipulations in this category (¶¶ 182, 254, 255, 256) are among the few proper proposals for stipulations of fact included in the managers' proposed Revised Stipulation of Facts. Respondent accepts them.

Respondent rejects the other (¶ 185) as ill-founded. The only evidence concerning the time and distance separating the L'Enfant Plaza Hotel from Baltimore-Washington Airport is the testimony of two FBI agents who made a test drive on a Friday afternoon. By their own admission, they did not, however, take the expressway adjacent to the hotel. Instead, they drove up New York Avenue. Ordinarily, the point might not be worth disputing. The chronology of events that occurred on October 9, 1981, is likely, however, to be a fact of some consequence. Precision will be a matter of some importance. Moreover, the fact that the FBI elected to use such a procedure illustrates concerns respondent has raised throughout.

E. [XI-XII] Recorded Conversations

These are probably the second most over-reaching sections in the managers' revised proposals. Respondent has previously noted the problems incident to using verbatim transcripts of recorded conversations where the recording is available and offered in evidence. *See* section IV.D above. The use of verbatim transcripts is ordinarily limited because they represent hearsay and reflect the transcriber's interpretative judgments. The managers would ignore those problems and take the process further still. They invite respondent to stipulate to their *interpretations* of the meaning and significance of these recordings in advance of trial. Respondent objects to the attempt and declines the invitation.[55]

The generic problems that permeate the managers' proposals throughout as well as the kinds of special problems that pervade the proposals in this category may be simply illustrated. The managers proposed that respondent stipulate:

> 51. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders wrote the following on a paper which he then showed to H. Paul Rico: "$150,000" and "within ten days a order will be signed."

The alleged piece of "paper" does not exist. The only direct testimony on what occurred at that meeting is testimony that could be provided by H. Paul Rico. The House acknowledges that, during the course of its inquiry, the Rhode Island Supreme Court found that H. Paul Rico had suborned perjury while he was an FBI agent in order to obtain an improper conviction.[56] Even after respondent brought that matter to the House subcommittee's attention, that subcommittee did not call Rico. Instead, the committee blithely concluded "that the issue of Mr. Rico's credibility is of marginal relevance."[57] Through proposed stipulations such as this, the managers would avoid this issue altogether.

---

[55] There is a further problem that would in any event preclude consideration of proposals such as these. Respondent's counsel received what were represented to be copies of the tapes at the meeting with the chair and vice-chair on May 18, 1989, and he has been unable to review them.

[56] H. Rep. 810 at 42 n. 43.

[57] *Id.*

Respondent was not present at the meeting between Borders and Rico and thus does not know what occurred. It is, however, an insult to him and the Senate to suggest that he accept as true a stipulation based upon the assertion of a former FBI agent who had previously suborned perjury when he thought it might aid in obtaining an improper conviction. Given respondent's long-standing claim that the FBI and the Justice Department improperly manipulated testimony and evidence throughout, the managers' blithe proposal at this stage should suffice to call into question the credibility and reliability of their pontific submissions.

In the same sequence, the managers propose as a fact to be stipulated:

> 52. During their meeting on September 12, 1981, beginning shortly after 8:25 a.m., William Borders told H. Paul Rico that "the other will follow", *i.e., the sentences would be reduced, once Thomas and Frank Romano filed a "motion for mitigation."*

Emphasis added. *"I.e."*? That is not a fact; it is an inference upon an inference, and one that reflects the interpretation the managers would like to give the inference. *See also* ¶¶ 53 and 95 (for further illustrations of the use to which "i.e." can be put in the stipulation process.)

The managers' proposed stipulations in these categories all share one or more of these defects. Respondent rejects them all as improper and insists, here as elsewhere, that the House first offer evidence in support of its claims and then and only submit such arguments as its managers then deem tenable concerning the inferences that the Senate should draw.

F. [XIII] FBI Reports

This is the most overreaching section of the revised proposed stipulations. The managers propose that respondent stipulate to the truth of facts shown only in hearsay accounts included in reports prepared by the FBI, including reports of their dealings with William Dredge, the informant, or that could only be established by testimony from FBI agents. These include facts based upon materials which were wrongly withheld from respondent and which were not the subject of evidence at the 1983 trial and report matters about which respondent could have no direct information. The underlying reports could not be admitted to prove the truth of these facts. The use of these documents as bases for proposed stipulations would be improper in any event. Given respondent's stated and now amply justified view of the credibility of the FBI agents who participated in the investigations into his conduct, respondent's position on these proposals should not be in doubt. He objects to their submission and rejects them all.

G. [XIV] 1985 Wiretap Application and Progress Reports

The stipulations in this category are largely improper and unlikely to conserve trial time. To the extent they are relevant or could be shown by admissible evidence, the managers' proposed documents and witness-list indicate they will be presented at the evidentiary hearings. They are, however, largely harmless, with one minor exception. All Judge Hastings's sealing orders, which were drafted by the assistant United States Attorneys who presented them, placed the various reports and documents under seal, not "all the information contained in the" report or other document. *See* ¶¶ 303, 304, 306, 310, 311, 317, 321, 328, 334.

H. [XV] Miscellaneous Proof

There are eight proposed stipulations in this category that are arguably proper (¶¶ 2, 3, 151, 156, 198, 218, 289, and 290) and ten others that are probably harmless (¶¶ 33, 86, 291, 346, 347, 352, 376, and 377), even though they involve matters that will necessarily be the subject of testimony and other evidence at the hearings. Respondent accepts the former and does not object to the latter. Respondent also agrees that Borders was not a member of the Florida Bar and had no official connection with the *Romano* case on September 12, 1981. He makes no stipulations concerning Borders's or Rico's conduct on that date (¶ 58).

The remaining proposals in this category are objectionable on a variety of grounds. Many involve matters that could only be shown by witnesses that have never been examined on behalf of Judge Hastings (*e.g.*, ¶¶ 62-66, 81, 82, 223, 224, 292, 293, 295, 375), some of which have never been the subject of competent testimony in any of the prior proceedings (*e.g.*, ¶¶ 81, 82, 223, 224, 292, 293, 295, 375). Several represent attempts to isolate out-of-context matters that will have to be the subject of testimony or documentary proof at trial in any event (*e.g.*, *id.* and ¶¶ 76, 78, 79, 80, 113, 135, 138, 140, 179, 210, 263, 354, 372, 378). Moreover, many involve matters that can only be shown through testimony or documents generated by Justice Department and FBI officials, whose credibility is open to substantial question and must be explored in cross-examination (*e.g.*, ¶¶ 135, 138, 140, 223, 224, 293, 372, 374, 375, 376, 378). Some involve government documents that were or have been withheld from respondent whose authors have yet to be produced for examination (*e.g.*, 223, 224, 375). The fact that these were included are consistent with the managers' strategy. Respondent objects to them on the specific grounds noted as well as those developed above. Except as expressly noted, he deems these proposed facts to be contested and open to dispute.

VI. CONCLUSION

Senate Resolution 38 authorized the Impeachment Trial Committee to report a statement of facts that are uncontested after the evidentiary hearings have been completed. It did not authorize and could not have authorized the committee to make binding factual determinations either before or after those hearings. The managers' unprecedented proposal was an improper attempt to induce the committee to determine facts. The committee's unprecedented adoption of that procedure was and remains improper and beyond the committee's authority.

The Impeachment Trial Committee lacked power to delegate its responsibility to the chair and vice-chair. Rule VII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials ("Impeachment Trial Rules") provides no support for that practice. That rule assumes the legislative business has been suspended (Rule XII) and that proceedings are being conducted before the Senate in the presence of the Senators present and the Presiding Officer (Rule VII). Thus, rulings made by the Presiding Officer during the course of the proceedings are made and subject to immediate challenge by any member present. Neither that rule nor any other provision in the Impeachment Trial Rules authorizes the Presiding Officer to conduct proceedings outside the Senate chambers or in the absence of a duly established quorum of the members.

The purported mandatory stipulation process combines these defects. In respondent's view, the entire committee lacks the power to make binding rulings that purport to place facts beyond the requirement of proof and the opportunity of dispute in advance of trial. The further delegation of this unauthorized power to the chair in consultation with the vice-chair purports to place the fact-finding power committed to the entire Senate in the hands of only two of its members.

The problem is compounded further by the decision to retain special staff to aid the committee in its work. By these three seemingly simple rulings, the Senate and the Impeachment Trial Committee have converted the designedly cumbersome *judicial* process of constitutional impeachment into an expedient *legislative* process designed to achieve a desired result in a manner that "most efficiently" discharges the unwelcome burden imposed. Respondent recognizes that he and his case are an unwelcome burden, but he did not do the imposing. He objects and will continue to object to the procedures such as these that may serve to discharge him "most efficiently," but that cannot further the duty of the Senate and of every Senator "to do impartial justice in all things pertaining" to the case of impeachment.

Respondent has submitted this response to demonstrate that his objections to the managers' proposals go to substance as well as form. He remains prepared to engage in a proper stipulation process after discovery is complete. He does and will continue to object to the proposals submitted by the House and to the process imposed by this committee.

Respectfully submitted,

Terence J. Anderson

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

June 1, 1989

XXV. WITNESSES AND DEPOSITIONS (continued)

MAJORITY MEMBERS

JACK BROOKS, TEXAS, CHAIRMAN

ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2137 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

MINORITY MEMBERS

HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

May 25, 1989

The Honorable Jeff Bingaman
Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

Pursuant to the Fourth Order of the Impeachment Trial Committee, dated May 24, 1989, enclosed please find a copy of the materials in our possession concerning the competency as a witness of Joseph Nesline.

Sincerely,

Alan I Baron
jc

Alan I. Baron
Special Counsel

AIB:mjp

Enclosures

cc: Michael Davidson (cover letter only)
    Terence Anderson (cover letter only)

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

June 1, 1989

The Honorable Jeff Bingaman
United States Senate
502 Senate Hart Office Bldg.
Constitution Ave. and
Second St., N.E.
Washington, D.C. 20510

The Honorable Arlen Specter
United States Senate
303 Senate Hart Office Bldg.
Constitution Ave. and
Second St., N.E.
Washington, D.C. 20510

Dear Senators Bingaman and Specter:

Pursuant to the Impeachment Trial Committee's Fourth Order concerning Disposition of Pretrial Issues, I write to request that the committee defer the requirement of specification until the Justice Department and the FBI have responded to my letters dated May 3, 1989, requesting production of documents. In particular, I believe respondent should be able to review the prosecution memorandum and related materials requested in item 5 at pages 5 and 6 of my letter to Attorney General Thornburgh and the reports and related materials concerning the improper "leaks" that occurred on and after October 9, 1981, requested in item 3 at pages 4 and 5 of that letter and in item 4 of my letter to Director Sessions before he can fairly be required to narrow the field and further particularize his request. As you recall, I requested that the committee's assistance in securing a prompt response at the conference on May 18, 1989, which you agreed to provide. I should hope that, with that assistance, the responses should be forthcoming promptly.

If you determine that this is a matter that cannot be deferred, I would ask that the committee authorize subpoenas to permit the depositions of the following persons:

1. Gerald McDowell. Mr. McDowell was the Chief of the Public Integrity Section throughout the relevant period. His role is described in the Request for Specific Depositions ("Specific Request") submitted on May 10, 1989. By virtue of his position, Mr. McDowell must necessarily have information concerning (a) the investigation and prosecution of Judge Hastings from 1981 to 1983; (b) the investigation and findings concerning the improper "leaks" that occurred

following Borders's arrest on October 9, 1981; and (c) the investigations concerning the leak of information to Mayor Clark and the related leak of grand-jury information. We would ask that the committee's subpoena also command Mr. McDowell to produce the documents requested by my May 3rd letter to Attorney General Thornburgh.

Insofar as we are aware, Mr. McDowell has never been required to testify concerning these matters. We have documented throughout our submissions to the House and the Senate the circumstances that support a fair inference that the Department's investigations into Judge Hastings's conduct have been tainted by improper motive and bias. Mr. McDowell is an appropriate official to testify and produce documents that may explain these circumstances. We submit that those explanations are long-overdue and should be provided now.

2. Robert Richter. Judge Richter was a Deputy Chief of the Public Integrity Section from the outset of the 1981 investigation through the conclusion of the 1983 trial. His role and prior testimony are described in the Specific Request at 13. Mr. Richter participated in the plea negotiations that produced Dredge's plea agreement. He must have been consulted about the decision to arrest Borders at the scene of the payoff. He was aware of the leaks that followed and of the Department's response or lack thereof. He should have been an author or co-author of the prosecution memorandum. He participated in the interviewing and preparation of witnesses for trial. He must have made or concurred in the government's decisions (a) to represent to the trial court that Dredge was not a material witness, and (b) to oppose Judge Hastings's repeated attempts to introduce evidence in support of his rainmaking defense. We ask that he be called so that he may be deposed in these matters. We also ask that the committee's subpoena command that he bring such notes or other materials concerning the case and his role as remain in his possession or under his control.

3. Peter Marcoline. Mr. Marcoline was the supervisory agent in the FBI's field office in Washington, D.C., responsible for supervising that office's participation in Operation Apple Eye. See Specific Request at 9. Although his role may have been less than other FBI officials, he has never been called to testify insofar as I am aware. Moreover, his memorandum dated October 9, 1981, reports a meeting on October 6 at which matters that should have been irrelevant were discussed. That point is developed in A Statement Concerning Judge Hastings's Need for Time and Funds to do Now What the House Should Have Done Before the Impeachment: Three Illustrations With Supporting Documents at 9. The memorandum was reproduced in the appendix that accompanied that Statement at 43. That meeting raises concerns that bear directly on the issues of motivation and

bias that may affect the credibility of evidence proffered from the FBI's records and present or former agents and officials. We ask that the committee issue a subpoena to agent Marcoline and command that he bring any notes concerning Operation Apple Eye or the October 6th meeting.

We emphasize that respondent believes that fairness and sound administration dictate that a final selection be postponed until the necessary documents have been produced. Nonetheless, each of the foregoing has significant information that bears upon the case.

Sincerely,

Terence J. Anderson

cc: Representative John Bryant
c/o Impeachment Trial Staff

Michael Davidson, Esq.
Senate Legal Counsel

Anthony J. Harvey ✓
Committee Administrator

XXVI. PRODUCTION OF DOCUMENTS (continued)

98-109 O—89——23

COPY

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 31, 1989

Mr. Terrence J. Anderson
University of Miami
School of Law
Post Office Box 248087
Coral Gables, Florida 33124-8087

Dear Mr. Anderson:

Reference is made to the Senate Impeachment Trial Committee ruling dated April 14, 1989, the FBI's response dated April 21, 1989, and your request for additional documents dated May 3, 1989.

Enclosed please find minutes of a meeting of the Criminal Undercover Operations Review Committee dated September 10, 1981, as well as an explanation of the deletion code that has been used in FBI documents previously provided to the House of Representatives and yourself.

Your letter of May 3, 1989 requested certain documents and information which we respond to as follows:

1. The enclosed minutes of the Criminal Undercover Operations Review Committee covers all documentation maintained by the Undercover and Sensitive Operations Unit, Criminal Investigative Division, FBI, regarding your request for "Memoranda, minutes, or notes" concerning this meeting or "any other meetings ... at which Operation Apple Eye was considered." Note that although the documentation of the deliberations of this Committee often contain privileged information and are not ordinarily available to anyone outside the Department of Justice, under these unique circumstances they are being provided to you in order to facilitate this impeachment process. Redactions have been made to this document consistent with the enclosed code and pursuant to the restrictions in disclosure specified in referenced FBI response.

2. A complete reexamination of FBI files relating to the Apple Eye investigation fails to disclose any drafts, completed affidavits, or applications that were prepared to seek authority to install pen registers or to intercept wire communications to or from Judge Hastings' home or chambers

telephone or the telephone in his hotel room at the L'Enfant Plaza Hotel. A complete review of FBI records concerning electronic surveillances conducted by the FBI fails to disclose any applications being made concerning wire interceptions being sought for these same locations.

3. A review of the FBI Apple Eye investigative files fails to disclose any "memoranda, minutes, or notes" concerning two meetings that you indicate were held September 6, 1981, to discuss the status and possible consequences of Operation Apple Eye other than what appears in documentation already provided.

4. The FBI declines your request for a 30-page letter dated July 29, 1982, from the Washington Field Office of the FBI to the Director, reported to be captioned "DOJ/FBI Investigation of the Unauthorized Disclosure of Information Concerning the Hastings-Borders Case." We do not believe that the document in question sheds any light on the concern you raised in paragraph 4 of your request letter of May 3, 1989. This decision is consistent with referenced FBI letter to Chairman Jeff Bingaman, Senate Impeachment Trial Committee, in which we advised the Senate that we would deny material which "would contravene the privacy of employees interviewed in an administrative inquiry."

5. You have requested "Any memoranda, minutes, or notes concerning Operation Apple Eye and the resulting prosecution and trial of Judge Hastings which were not included" under File Number HQ58-10762. To date, the FBI has released to the House of Representatives all information not otherwise privileged which was retrievable from our central record system concerning the Operation Apple Eye investigation and subsequent prosecution of Judge Hastings.

6. You have requested information concerning "investigations that were conducted with respect to the 1981 allegations that Borders was involved in similar scams." Specifically, you request documents outlining the "nature, extent and duration of the investigation that was conducted," documents disclosing whether and at what stage the respective judges were informed of the investigations, communications to the then FBI Director concerning these matters, and the then Director's own notes concerning these matters.

We take exception to the characterization "similar scams," because investigation disclosed that Borders' relationship with Judge Hastings was not a scam. However, a review of our investigative records determined that in and around 1981 allegations were made that Borders was soliciting bribes in connection with cases pending before other judges. Beyond confirmation of this fact, the FBI declines your request for documentation as to the specifics of these allegations. Established Department of Justice and FBI policy preclude release of confidential law enforcement records that identify the individuals subject to criminal investigations.

7. As previously indicated, the requested explanation of the FBI's deletion code used in redacting privileged material from FBI documents, which we assumed had been provided to you by the House of Representatives, is enclosed.

We believe that this letter is responsive to your requests.

Sincerely yours,

/s/ John E. Collingwood

John E. Collingwood
Inspector in Charge
Congressional Affairs Office

Enclosures (2)

DELETION CODE

GOVERNMENTAL PRIVILEGES:

A. Information which is properly classified pursuant to Executive Order, the disclosure of which could reasonably be expected to cause damage to the national security or the conduct of the Government's international relations.

B. Information, the disclosure of which would reveal the identity of an informant.

C. Informant symbol number.

D. Informant file number.

E. Information, the disclosure of which would identify a source of information specifically requesting of confidentiality.

F. Information, the disclosure of which would identify a source of information with whom there is a presumption of confidentiality.

G. Information, the disclosure of which could jeopardize an ongoing investigation.

H. Information, the disclosure of which would obviate the effectiveness of an investigative method or technique.

I. Information, the disclosure of which would divulge opinions, recommendations, and advice generated in the process of formulating policies and making decisions.

STATUTORY PRIVILEGES:

J. Information, the disclosure of which is prohibited by statute (with citation to the applicable statute).

COMMON LAW PRIVILEGES:

K. Attorney - client privilege.

L. Attorney work product privilege.

M. Information, the disclosure of which would tend to identify the location of a cooperating source in this matter.

OTHER GENERAL OBJECTIONS:

N. Information which originated with another Government agency.

O. Information, the disclosure of which would be an unwarranted invasion of the personal privacy of individuals not parties to this litigation.

P. Information which is not relevant to the matters at issue in the litigation.

Q. File Numbers.

12. "APPLE EYE" - Presented by Supervisor Sean P. Hilly, OC Section

A.) Synopsis: William Borders, a Washington D. C., attorney is attempting, through United States District Court Judge Alcee Hastings, to fix two cases that are before Judge Hastings. One of these cases is the Laborers International Union case wherein Santo Trafficante, LCN boss, Tampa, Florida, Anthony Accardo, consigliere, Chicago LCN, and 13 others are involved. The other one is the Romano Brothers case wherein they were sentenced by Judge Hastings on 7/8/81 to three years in custody of the Attorney General and fined in excess of one million dollars. Surveillances of Borders have put him and Trafficante together on 7/21 and 8/21/81, at the Fontainbleau Hotel, Miami Beach, Florida. William Dredge, who advised both the FBI and United States Attorney's Office concerning the facts of this case, is willing to introduce two undercover Agents (UCAs) as the Romano brothers to Borders. Dredge is currently under indictment in Baltimore, Maryland on narcotics charges. Former FBI Agents will be used as undercover operatives.

B.) Issues Resolved: 1. Does Judge Hastings know the Romano Brothers and if so, how can the payoff to the Judge by the UCAs be accomplished? The Judge does know the Romanos, but the scenario does not propose meeting with Hastings directly. Borders will be paid conditionally after an overt act by Judge Hastings. For example, we might pay him to have Judge Hastings go to a particular restaurant and order a particular meal. This would prove Judge Hastings is involved and Borders is not trying to scam us. If the opportunity arises to meet directly with Judge Hastings the UCAs will insist on using a representative of the Romanos' or have Judge Hastings attend a prearranged meeting resulting in an arrest. However, it is not likely Judge Hastings will meet the UCAs face to face.

2. Does Borders know either of the UCAs or is he likely to recognize either of the UCAs? No, Borders is from Washington, D.C. and the UCAs were assigned to Miami before retirement and have resided there since.

3. Will UCAs be conversant about this case? Yes, they will be briefed in Florida concerning the matter.

4. How did the offer from the Judge to accept a payoff materialize? According to Dredge, Judge Hastings contacted Borders and asked if he knew of anyone to get the message to the Romanos that their cases could be fixed for $150,000. Borders called Dredge, being from Florida, and explained the situation. Dredge is slightly familiar with the Romanos. Borders additionally told Dredge of the Laborers International Union. The price for this case was set at $600,000 for three defendants ($200,000 each) of which Borders told Dredge $100,000 had already been paid by Gonzalas, Trafficante's attorney, to Borders. Independently, FBI surveillance revealed the 7/21 and 8/21 meetings between Borders and Trafficante.

5. What links Borders to Judge Hastings? Borders' telephone toll records show calls of short duration from Borders to Judge Hastings. Toll records of Judge Hastings are currently being obtained.

6. What else could confirm Judge Hastings being in the pocket of Borders other than an overt act of Judge Hastings as described earlier? More than likely there is enough probable cause for a Title III, but due to the fact that the subject is a Federal Judge, the Department would prefer the overt act as well.

7. Is there a deal cut with Dredge to obtain his cooperation? Not yet. The Baltimore United States Attorney is supportive, but the Assistant United States Attorney handling Dredge's case is not. A co-defendant of Dredge's is likely to be indicted locally for the murder of a witness in a pending federal case. Secondly, the appearance of a sweetheart deal with Dredge may be detrimental in the long run. Third, Dredge would have to submit to debriefing concerning narcotic matters in Baltimore which Dredge claims he knows nothing about since he is from Florida.

8. How does Borders know Trafficante? We don't know.

9. What does Dredge's counsel think of proposed cooperation with the Government? He is not aware. Being an ex-Assistant U.S. Attorney in the District of Columbia, Dredge's counsel may know Borders, although there is no evidence of the fact to date. However, his attorney is not known as someone who maintains confidences well. Replacement of his attorney has not been suggested,but Dredge appears to be coming to that conclusion independently. The Government could suggest to Dredge that another attorney be retained for the express purpose of consummating an agreement with the government without affecting his Sixth Amendment rights.

10. Is Borders under investigation for anything else? Currently, Borders is a subject in a similiar investigation involving a judge in the District of Columbia fixing a case of a narcotics/prostitution defendant.

B

11. Is Dredge telling us the truth? Based on the surveillances in Miami it appears Dredge is telling the truth. Additionally, an [redacted] informant verifies some of Dredge's allegation. Although not recorded on tape an FBI Agent heard a one sided conversation between Dredge and an individual believed to be Borders (Dredge dialed a phone number known to be Borders') which indicated the person on the other end was familiar with the Florida cases.

12. How does Borders know Judge Hastings? Borders was not mentioned in the Bureau investigation conducted on Judge Hastings upon his appointment to the federal bench. Possibly Borders was involved in Judge Hastings being recommended to the bench, but the Deputy Attorney General's files will need to be reviewed for this to be ascertained.

13. How do we handle the UCAs' liability since they are no longer employed by FBI? Either with a personal services contract, making them a special employee, or, preferably, handling them as a Bureau informant.

14. Will we jeapordize the Romano brothers' rights by having our operatives pose as them? It does not affect their appeals, but we would be obliged to tell the Romanos eventually.

15. What if criminal charges against Judge Hastings are not sufficiently developed by the time he is to hear the Romano case? Based on circumstantial evidence the prosecution in Florida could ask Judge Hastings to remove himself from the Romano and other cases.

16. What adverse publicity could we expect if we carry through with our scenario? Borders recently filed suit against the Reagan Administration to stay on the Washington, D.C. Judicial Selection Committee seeking to place minorities in judicial seats. It received extensive publicity and Borders won his suit. Borders could raise the issue that since he won his suit, the Reagan Asministration was utilizing the Justice Department to get him.

17. Has Dredge recorded any conversations to date? No. He is not willing to record until he and the Government come to an agreement.

18. Do we have strong predication on which to proceed? Yes, first we have the Borders/Trafficante meeting and conversations which logically leads to a Borders/Judge Hastings relationship.

19. If the proposed meeting between Borders and the UCA is to be in Washington, D.C., won't venue lie in Washington, D.C.? Not necessarily. Although Borders wants the UCA to meet in Washington, D.C., Judge Hastings would still be performing the overt act elsewhere.

20. What is next to be heard by Judge Hastings in the Romano case? Post trial motions.

C. Recommendations: 1. That Apple Eye be approved for 60 days and funded for $30,000 with the stipulation that any planned meeting between the UCAs and Judge Hastings must first obtain the approval of the Director.

2. That the overt act or acts performed by Judge Hastings at our request not be open to more than one interpretation.

3. That the agreement between Dredge and the Government be resolved as soon as possible.

4. That a conversation between the UCA and Borders be recorded to strengthen the prediction.

10-15-82
Date

Dana E. Caro

U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

Professor Terence J. Anderson
The University of Miami School of Law
Coral Gables, Florida 33124-8087

Dear Professor Anderson:

The Department of Justice has received your request for documents in connection with the impeachment proceeding now underway in the the United States Senate against your client, United States District Judge Alcee L. Hastings. While the Department of Justice is not a party to this proceeding, the Department intends to cooperate in this important undertaking by the Senate, and will discuss with you the terms under which you may be permitted to interview those few Departmental personnel with information relevant to the impeachment proceeding. However, with respect to document production, it is our understanding that the House managers of the impeachment proceeding have provided or are in the process of providing to you documents that it regards as relevant to the pending proceeding. Your request for additional Departmental documents appears to reflect an intention to delve into areas of prosecutorial decision making that have no bearing on your client's guilt or innocence on the impeachment charges that have been leveled against him by the United States House of Representatives. We are aware of no Senate ruling that would expand the subject matter of the pending impeachment proceeding to include a general investigation into Department of Justice decision making concerning the various investigations and prosecution of your client.

In that light, we have reviewed your request for additional documents carefully, and conclude that we must deny your requests. The bulk of your request is for internal documents which are privileged attorney work product or predecisional memoranda, and you have failed to articulate any theory on which the applicable privilege could be overcome by the documents' particular relevance to an inquiry into whether your client committed the impeachable acts with which he is charged. While some documents within the scope of your requests have been made public or provided to you in the course of proceedings to date, we assume you are not referring to these in your request, and therefore are not providing duplicate copies of such documents. Our specific responses to each of your requests are set out below.

The Bribery Allegations

1) As you know, the allegations against your client which underlay the bribery charges against him in 1981 were first communicated to the Department of Justice by an informant, William Dredge. The memoranda describing Dredge's allegations which initiated the investigation into your client's conduct are reprinted in the Appendix to the Hearings before the Subcommittee on Criminal Justice in the Matter of the Impeachment Inquiry Concerning U.S. District Judge Alcee L. Hastings, at 541-565. The remainder of this request is denied as privileged and, so far as we can tell, irrelevant to the pending impeachment trial.

2) You request Department of Justice documents reflecting the internal decision making process leading up to the plea agreement with the informant William Dredge. We are unable to fathom how this material is relevant to the question of whether Judge Hastings was involved in a bribery conspiracy with William Borders. Your request is denied as privileged and irrelevant to the impeachment proceeding.

3) We decline your request for files concerning any DOJ investigation which may have been conducted into leaks of confidential investigative information as privileged and irrelevant to the impeachment proceeding. While there was a serious and regrettable leak of confidential information in this case, we are unable to see how that unfortunate fact affects your client's guilt or innocence in this matter.

4) We decline your request for internal status and progress reports which may have been prepared from time to time in the course of the bribery investigation of your client. These documents are privileged attorney work product and irrelevant to the question of whether your client was involved in the conduct that underlies the articles of impeachment.

5) We decline your request for the prosecution memorandum and related documents related to the decision to indict your client on the bribery charges. These internal decision making documents are privileged and irrelevant to the issues that will be before the Senate in the impeachment proceeding.

6) We decline your request for internal DOJ documents for the period of December 29, 1981 through April 15, 1983 concerning the trial, Judge Hastings' assignment to cases, and witness

interview notes prepared by the prosecutors on the case. These documents reflect the internal decision making processes of the Department and attorney work product, and as such are privileged. However, if you wish to submit specific requests for interview notes of specific individuals who will be witnesses at the impeachment proceeding, we will review our files to determine whether providing you with such notes would be appropriate.

The Allegations of Improper Disclosure of Confidential Information

1) Legal restrictions concerning the dissemination of wiretap information preclude response to this request. In any event, notes and memoranda reflecting the process by which the decision to investigate your client was reached are privileged internal decision making documents. Furthermore, the process by which the decision to investigate was reached in the Department of Justice is irrelevant to the question of whether your client deliberately leaked sensitive law enforcement information which had been provided to him in his official capacity as a United States judge.

2) We deny your request for documents reflecting communications between the FBI and the Criminal Division or the Office of the Attorney General concerning the decision to decline prosecution of this matter. The documents requested reflect the internal decision making process and are privileged. You have not articulated the reason why you believe these documents might be relevant to the Senate's consideration of the articles of impeachment. As you state in your letter, you have been provided with considerable documentation concerning this matter, and that documentation includes any exculpatory evidence known to the Department of Justice.

3) Your generalized request for trial attorney work product in the form of notes of interviews of "potential witnesses" in this matter will be denied at this time. If you will identify for us specific individuals who will be witnesses and the subject matter as to which they are expected to testify, we will review our files and make an individualized determination as to whether documents should be disclosed to you.

Sincerely,

Joe D. Whitley
Acting Associate Attorney General

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA
ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

June 8, 1989

John C. Keeney, Esq.
Deputy Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C. 20530

Dear Mr. Keeney:

I am writing to confirm the understanding which the Department of Justice, including the Federal Bureau of Investigation, and the Senate Impeachment Trial Committee on the Articles of Impeachment against Judge Hastings have reached concerning the committee's review of documents requested by Judge Hastings.

As we have agreed, representatives of the committee will make an in camera review of the documents in the possession of the Department, including those in the possession of the Bureau, which were requested by Judge Hastings in his May 3, 1989, letters to the Honorable Richard L. Thornburgh and the Honorable William S. Sessions. Those letters are the subject of the May 31, 1989 response of the Bureau and the June 2, 1989 response of the Department.

The review will be made in accordance with the committee's April 14, 1989 ruling concerning the proper scope of inquiry into the motivations of the federal prosecutors and investigators who are likely to be witnesses in this case, namely, whether the investigations were conducted in a manner intended to mislead a court or trier of fact as to Judge Hastings' guilt or innocence. In the event that it is determined by the committee that particular documents should properly be made part of the pending impeachment proceedings, and accordingly, with appropriate excisions, if any, made available to the parties for use in pretrial and trial examinations, the committee will raise the issue of production of documents with the Department, including conditions under which documents could be made available. The committee, of course, reserves the right to use formal process for Department documents, in the event that agreement cannot be reached about the proper handling of particular documents.

As we also discussed, your position is that the materials in question include documents which the Department and Bureau cannot disclose absent a court order. The committee is preparing to write to Judge John D. Butzner, Jr., who has been designated to act on applications for grand jury and electronic surveillance materials in the Hastings matter, seeking an order which would both permit the Department of Justice, including the Federal Bureau of Investigation, to disclose those materials, and would permit Department and Bureau witnesses to testify in the Senate concerning those materials.

Thank you very much for your assistance in this matter.

Sincerely yours,

Elaine W. Stone

Elaine W. Stone

cc. Terence J. Anderson, Esq.
Alan I. Baron, Esq.

(VIA COURIER)

U.S. Department of Justice

Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JUN 14 1989

Elaine W. Stone, Esq.
Counsel to the Committee
United States Senate Impeachment
  Trial Committee
Room Sh-902D
Hart Senate Office Building
Washington, D.C. 20510

Dear Ms. Stone:

Pursuant to the understanding reached between the Department of Justice and the Senate Impeachment Trial Committee during our recent telephone conversations and outlined in your letter of June 7, 1989, on June 9, 12 and 13, members of your staff reviewed the files relevant to this matter in the possession of the Public Integrity Section. Enclosed are copies of the materials your staff identified for production during their review which the Department of Justice has agreed to turn over. For both our records, I have appended a complete index of the materials being forwarded as well as a list of items which were withheld at the request of the Federal Bureau of Investigation.

Sincerely,

John C. Keeney
Deputy Assistant Attorney General

By:
Gerald E. McDowell
Chief
Public Integrity Section
Criminal Division

Enclosures

U.S. Departm of Justice

Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

June 14, 1989

RECEIVED JUN 1 5 1989

Elaine W. Stone, Esquire
Senate Legal Counsel
Impeachment Trial Committee
Hart Senate Office Building, Room SH-902D
Washington, D.C.

Dear Ms. Stone:

To supplement the materials supplied to you earlier today, I am enclosing a copy of a May 11, 1982 memorandum from David J. McKeon to Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility with respect to the Hastings leak investigation.

Pursuant to our conversation earlier today, excision of certain names have been made in the attached memorandum.

Sincerely,

John C Keeney

John C. Keeney
Deputy Assistant Attorney General

Enclosure

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN

PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT

DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-6877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

VIA HAND DELIVERY

June 14, 1989

Professor Terence J. Anderson
c/o Karr, Lyons & McLain
1001 Connecticut Avenue, N.W.
Ninth Floor
Washington, D.C. 20036

Dear Professor Anderson:

Enclosed please find a set of documents provided by the Justice Department in response to your May 3, 1989 letter request to Attorney General Thornburgh. These documents were provided by Justice after an "in camera" review of Justice files by Committee counsel and staff, as described more fully in the June 7, 1989 letter from Committee Counsel Elaine W. Stone to Deputy Assistant Attorney General Keeney, a copy of which you have. I also enclose a copy of the index of the documents prepared by Justice.

The Justice Department agreed to provide you with all documents identified by the Committee with the following exceptions:

> (1) The formal memorandum and handwritten notes of the Indictment Review Committee's evaluation of the case against Judge Hastings. These documents were made available to Committee counsel, but Justice objected to having them produced to your client as work product.
>
> (2) The prosecution memorandum relating to the 1981 indictment of Judge Hastings. This is being produced herewith, with certain limited deletions (reviewed by Committee counsel) on the basis of work product.
>
> (3) Two summary memoranda dated May 11, 1982, and June 3, 1982, relating to the "leaks" investigation. We are engaged in further discussions with Justice and the FBI to see if there is a summary or redacted form in which these documents can be provided to you.

After these documents had been identified, two other documents were removed and three others redacted by the FBI. These are noted on the index.

It may be that some of the material supplied herewith is duplicative of material already in your possession. If so, that is because we wished to be certain of providing appropriate materials to you and requested Justice to copy documents where we were uncertain of whether you already had them.

The FBI permitted our review of a limited number of documents:

(1) An undated teletype (which you may already have in redacted form) referring to an allegation by an informant (Dredge) of a bribery scheme involving Borders and an unnamed appeals judge in Louisiana. The document is enclosed herewith in unredacted form. The FBI, at the Committee's request, will ascertain whether there were any investigative files opened in relation to this matter.

(2) Documents relevant to the allegation described in paragraph 6 of your May 3, 1989 letter to Director Sessions. The FBI adhered to its refusal to make any such material available to you, on the grounds of both protecting a confidential source and avoiding improper public disclosure. To the extent that you feel evidence of this sort is material to your client's defense, we urge that you and the House attempt to reach an appropriate stipulation to place the evidence before the Committee without the need for the documents.

(3) The document described in paragraph 4 of your May 3, 1989 letter. The FBI adhered to its refusal to make this material available to you, on the ground that as a policy internal agency review materials are not disclosable outside the Bureau. It will, however, prepare a summary of this document to be provided to you.

Please call if you have any questions.

Sincerely,

Mark A. Klugheit

Enc.

cc: (w/encl.) Alan I. Baron, Esq.

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

June 7, 1989

The Honorable Jeff Bingaman
United States Senate
502 Senate Hart Office Bldg.
Constitution Ave. and
Second St., N.E.
Washington, D.C. 20510

The Honorable Arlen Specter
United States Senate
303 Senate Hart Office Bldg.
Constitution Ave. and
Second St., N.E.
Washington, D.C. 20510

Dear Senators Bingaman and Specter:

This will confirm that Judge Hastings will not appear or submit any response in the proceedings initiated by your request for the entry of an order by the Honorable John D. Butzner authorizing disclosure of grand jury and electronic surveillance materials and testimony concerning those materials for use in the impeachment trial of Judge Hastings. Judge Hastings believes that the Senate has full authority to obtain documents and testimony that either party deems necessary for a fair and proper trial in this case of impeachment.

As you know, Judge Hastings has challenged the right of the Senate to delegate its authority to the Impeachment Trial Committee by a complaint filed June 1, 1989. Hastings v. United States Senate, Civ. No. 89-1602 (D.D.C.). Judge Hastings believes the issues raised by that complaint are properly before that court, and he reserves the right to pursue them there. Because the effect of the order you request will be to confirm that the requested materials and testimony will be available to the Senate and because he believes that the issues raised by his prior suit cannot properly be adjudicated in collateral proceedings, Judge Hastings does not intend to appear or submit any response to Judge Butzner in connection with your request.

Sincerely,

Terence J. Anderson

cc: Michael Davidson, Esq., Senate Legal Counsel
Representative John Bryant
c/o Impeachment Trial Staff

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. [illegible], COUNSEL
P. CASEY [illegible], STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

June 8, 1989

The Honorable John D. Butzner, Jr.
United States Court of Appeals
for the Fourth Circuit
Fourth Floor
U.S. Courthouse
10th and Maine
Richmond, Virginia 23217

Re: Request for Access to Grand Jury Materials and Electronic Surveillance Materials and Information

Dear Judge Butzner:

We are the chairman and vice chairman of the committee which has been appointed to receive and report evidence to the Senate on the articles of impeachment that are pending against Judge Alcee L. Hastings. The committee has been appointed pursuant to Senate Resolution 38 of the 101st Congress, 135 Cong. Rec. S2803 (daily ed. March 16, 1989), and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, S. Doc. No. 101-3, at 15. The committee's evidentiary proceedings are scheduled to commence on July 10, 1989.

In connection with his trial preparation, counsel for Judge Hastings has asked the committee to authorize the pretrial examination of certain past and current Justice Department and FBI personnel, and has further requested that these persons be ordered to bring certain documents to their pretrial examinations. In addition, Judge Hastings has made requests to the Justice Department and the FBI for certain documents in their possession. Those requests have, in significant part, been denied by the Department.

The committee believes that it can best resolve disputes concerning the relevance of these documents, and other questions that may arise about their appropriate handling in the Senate's impeachment proceedings, by an in camera review. The Department of Justice has stated that it does not object to providing the documents to the committee for that purpose, but has indicated that certain of the documents consist of or refer to grand jury or electronic surveillance materials which cannot be released absent a court order. Also, the Department believes that a court order is required before its personnel may testify about grand jury or electronic surveillance information. We understand that you have been designated to act on such matters.

On behalf of the Impeachment Trial Committee on the articles of impeachment against Judge Hastings, we accordingly request that the Court authorize disclosure of the matters described below, both in the form of the documents themselves and in the form of testimony in proceedings of the Senate Impeachment Trial Committee, as well as in any proceedings that may be held before the full Senate.

Specifically, we request that the Department of Justice, including the Federal Bureau of Investigation, be authorized to provide to our committee, through its representatives:

(1) All records, transcripts, minutes and exhibits of Grand Jury No. 81-1 (Miami), which indicted Judge Hastings in Case No. 81-596-Cr.

(2) All records, transcripts, minutes, and exhibits of Grand Jury No. 86-3 (Miami), relating to Judge Hastings' role in authorizing and supervising the electronic surveillance of the Miami local of the International Longshoremen's Association or relating to the possible improper disclosure by Judge Hastings of information generated by such electronic surveillance.

(3) All documents which relate to Judge Hastings' role in authorizing and supervising the electronic surveillance of the Miami local of the International Longshoremen's Association and all documents which relate to the possible improper disclosure by Judge Hastings of information generated by such electronic surveillance, including:

(a) the original application and supporting affidavit seeking authorization for the telephone interceptions supervised by Judge Hastings:

(b) all orders issued by Judge Hastings with respect to the surveillance;

(c) all progress reports and requests for extensions of such interceptions;

(d) tapes and transcripts of conversations which refer to any of the following persons: Steven Clark, Kevin "Waxie" Gordon, and Richard Bonehill; and

(e) reports of interviews by law enforcement representatives of Steven Clark, Kevin "Waxie" Gordon, and Richard Bonehill.

We further request that former and present Department of Justice, including the Federal Bureau of Investigation, personnel be authorized to give testimony in proceedings of the Senate Impeachment Trial Committee, as well as in any proceedings that may be held before the full Senate, concerning the matters enumerated above.

With one exception, disclosure of all of the foregoing materials was requested by the House Committee on the Judiciary in the course of its impeachment proceedings in 1987, and was ordered by this Court. We have appended copies of the court's two previous orders as Exhibit "A" hereto. The current request is in one respect broader than those previously made by the House, which had requested the testimony and related exhibits of only two particular witnesses, Steven Clark and Chris Mazzella, at Grand Jury No. 86-3, the grand jury which investigated the allegations that Judge Hastings had improperly disclosed confidential wiretap information. Our committee is also asking that the Department of Justice be authorized to disclose and to give testimony on any portion of those grand jury proceedings that are pertinent to the impeachment proceedings.

Our committee's obligation to receive and report evidence on the articles of impeachment will best be met if, as was previously ordered by this Court in response to the House request concerning Grand Jury No. 81-1, which investigated the bribery allegations, disclosure also is permitted for all pertinent Grand Jury No. 86-3 proceedings. It is possible that the Department of Justice files will contain information from those proceedings, and that the testimony of witnesses before this committee or the Senate will involve aspects of those proceedings, other than the testimony of those persons whose testimony was previously sought by the House Committee on the Judiciary.

We have consulted with the Department of Justice about this request. Also, both counsel for Judge Hastings and Special Counsel to the House of Representatives have been advised of it. The House of Representatives has stated, through its counsel, that it has no objection to entry of the requested order. Counsel for Judge Hastings has stated that Judge Hastings will not submit any appearance or response to the Court concerning this request.

If the Court has any questions concerning this request, please contact Elaine W. Stone, counsel to this committee, at 202-224-3617.

Sincerely,

Jeff Bingaman
Chairman

Arlen Specter
Vice Chairman

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

Misc. No.

IN RE: GRAND JURY PROCEEDINGS
OF GRAND JURY NO. 81-1 (Miami)

GRAND JURY 86-3 (Miami)

Judge Alcee L. Hastings

O R D E R

Upon consideration of the request dated June 8, 1989, by the Honorable Jeff Bingaman and the Honorable Arlen Specter, Chairman and Vice Chairman respectively, of the Impeachment Trial Committee on the articles of impeachment against Judge Alcee L. Hastings, for reasons adequately stated in In re Grand Jury Proceedings, 841 F.2d 1048 (11th Cir. 1988) (special panel), and In re Request for Access to Grand Jury Materials, 833 F.2d 1438 (11th Cir. 1987) (special panel);

IT IS ORDERED that the Department of Justice, including the Federal Bureau of Investigation, is authorized to provide the Committee through its representatives:

(1) All records, transcripts, minutes and exhibits of Grand Jury No. 81-1 (Miami), which indicted Judge Hastings in Case No. 81-596-Cr.

(2) All records, transcripts, minutes, and exhibits of Grand Jury No. 86-3 (Miami), relating to Judge Hastings' role in authorizing and supervising the

electronic surveillance of the Miami local of the International Longshoremen's Association or relating to the possible improper disclosure by Judge Hastings of information generated by such electronic surveillance.

(3) All documents which relate to Judge Hastings' role in authorizing and supervising the electronic surveillance of the Miami local of the International Longshoremen's Association and all documents which relate to the possible improper disclosure by Judge Hastings of information generated by such electronic surveillance, including:

(a) the original application and supporting affidavit seeking authorization for the telephone interceptions supervised by Judge Hastings;

(b) all orders issued by Judge Hastings with respect to the surveillance;

(c) all progress reports and requests for extensions of such interceptions;

(d) tapes and transcripts of conversations which refer to any of the following persons: Steven Clark, Kevin "Waxie" Gordon, and Richard Bonehill; and

(e) reports of interviews by law enforcement representatives of Steven Clark, Kevin "Waxie" Gordon, and Richard Bonehill.

IT IS FURTHER ORDERED that former and present personnel of the Department of Justice, including the Federal Bureau of Investigation, are authorized to testify in proceedings of the Impeachment Trial Committee and in proceedings that may be held before the Senate of the United States concerning the matters enumerated above.

John D. Butzner, Jr.

John D. Butzner, Jr.
Senior Circuit Judge
Sitting by Designation

Entered: June 8, 1989

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE G. [illegible], COUNSEL
P. CASEY [illegible], STAFF ASSISTANT
MABEL T. [illegible], STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8677

United States Senate

IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

June 27, 1989

The Honorable John D. Butzner, Jr.
United States Court of Appeals
  for the Fourth Circuit
Fourth Floor
U.S. Courthouse
10th and Main
Richmond, Virginia 23217

Re: Supplementary Request for Access by the Senate Impeachment Trial Committee to Sealed Information Held By the Federal Bureau of Investigation

Dear Judge Butzner:

On June 9, 1989, this Court, acting pursuant to our request on behalf of the Impeachment Trial Committee on the Articles of Impeachment against Judge Alcee L. Hastings, entered an order which authorized the release to the committee of certain grand jury and electronic surveillance materials in the custody of the Department of Justice and the Federal Bureau of Investigation. A copy of the June 8, 1989, order is attached hereto as Exhibit "A."

The Federal Bureau of Investigation has now advised us that there are additional wiretap materials held under seal in its files which it believes are not covered by your June 9, 1989, order and that an additional order is required before its agents can testify fully at the impeachment trial proceedings. These materials consist of tape recordings pertaining to the interception of the telephones at the law offices and home of William A. Borders, Jr., the attorney with whom Judge Hastings is alleged to have conspired in the solicitation of a bribe. These same materials were previously released to the House of Representatives pursuant to an order of this Court, entered March 20, 1989, in connection with these impeachment proceedings. A copy of the March 20, 1989, order is attached hereto as Exhibit "B."

We anticipate that those tape recordings may be material to the impeachment proceedings pending before the committee and that testimony will be elicited from witnesses concerning their contents. On behalf of the Impeachment Trial Committee on the articles of impeachment against Judge Hastings, we accordingly request that the Court authorize disclosure of the matters described below, both in the form of the recordings themselves and in the form of testimony at the impeachment proceedings.

Specifically, we request:

(1) that the Department of Justice, including the Federal Bureau of Investigation, be authorized to provide to our committee, all tape recordings pertaining to the interception of the telephones at the law offices of William A. Borders, Jr., and at the home of William A. Borders, Jr., in Misc. No. 81-0202, and

(2) that former and present Department of Justice personnel, including personnel of the Federal Bureau of Investigation, be authorized to give testimony in proceedings that may be held before the Senate Impeachment Trial Committee, as well as in any proceedings that may be held before the full Senate, concerning the matters enumerated above.

The House of Representatives has stated, through its counsel, that it has no objection to entry of the requested order. Counsel for Judge Hastings has stated that Judge Hastings will not submit any appearance or response to the Court concerning this request.

If the Court has any questions concerning this request, please contact Elaine W. Stone, counsel to this committee, at 202-224-3617.

Sincerely,

Jeff Bingaman
Jeff Bingaman
Chairman

Arlen Specter
Arlen Specter
Vice Chairman

cc: Terence J. Anderson, Esq.
Alan I. Baron, Esq.

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA
ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-802D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Wednesday, June 7, 1989

With due notice, the comittee met in closed session to deliberate upon pretrial matters.

The committee adopted, by the favorable vote of all nine Senators present, a resolution directing the Senate Legal Counsel to apply to the United States District Court for the District of Columbia for an order immunizing, from use in a prosecution other than for perjury before the committee, any testimony that William Borders, Jr., may give if called as a witness.

The committee determined that it shall require both parties to submit their written position regarding their intent to call William Borders, Jr., as a witness.

Members of the committee were designated to preside at the pretrial examination of witnesses for whom the committee has issued a subpoena.

Isabel T. McVeigh

Isabel T. McVeigh
Journal Clerk

101TH CONGRESS
1ST SESSION

RESOLUTION

of the Impeachment Trial Committee
on the Articles Against Judge Alcee L. Hastings

To immunize from use in prosecution the testimony of,
and other information provided by,
William A. Borders, Jr.

June 7, 1989

MR. BINGAMAN, the Chairman of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, submitted the following resolution to the Committee, which approved it by a vote of 9 of its twelve members on the 7th day of June, 1989.

Whereas, the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings has been appointed, pursuant to Senate Resolution 38, 101st Congress, and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, to receive evidence and take testimony on the articles of impeachment against Judge Alcee L. Hastings;

Whereas, the Committee may require William A. Borders, Jr., to testify and provide other information at its proceedings;

Whereas, the Committee anticipates that William A. Borders, Jr., may refuse to testify or provide other information at its proceedings on the ground of self-incrimination; and

Whereas, pursuant to 18 U.S.C. §§ 6002 and 6005, a committee of the Senate may seek, by two-thirds vote, a court order immunizing testimony and other information provided by a witness from use in prosecutions other than for perjury, giving a false statement, or otherwise failing to comply with the court order: Now, therefore, be it

Resolved, That the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, pursuant to 2 U.S.C. §§ 288b(d) and 288f, directs the Senate Legal Counsel to apply for a court order immunizing from use in prosecutions the testimony of, and other information provided by, William A. Borders, Jr., at proceedings of the Committee.

Attest: A True Copy

Anthony L. Harvey

Anthony L. Harvey
Committee Administrator

COMMITTEE RULES OF PROCEDURE

XXVIII. SUBMISSION OF RULES OF PROCEDURE FOR THE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

SUBMISSION OF RULES OF PROCEDURE FOR THE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS

Mr. BINGAMAN. Mr. President, on May 17, 1989, the Impeachment Trial Committee on the Articles of Impeachment against Judge Alcee L. Hastings, adopted two rules to govern aspects of its pretrial proceedings.

The first rule, adopted pursuant to rule 26.7(a)(2) of the Standing Rules of the Senate, reduces to one member the committee quorum for taking sworn pretrial testimony. Judge Hastings and the House managers have asked to examine certain witnesses in advance of the committee's evidentiary hearings, which will begin on July 10, 1989. Although the pretrial examination of witnesses in a Senate impeachment proceeding is unprecedented, the committee has concluded that it should, in the circumstances of the present impeachment, permit a limited number of them. The rule implements the committee's determination that pretrial examinations may proceed before a quorum of one member. As with the impeachment proceedings concerning Judge Claiborne, the committee's evidentiary hearings will take place in the presence of a natural quorum of at least 7 of its 12 members.

The second rule provides that a pretrial procedural ruling by the chairman of the committee, in consultation with the vice chairman, shall be distributed to members of the committee. The ruling shall stand as the ruling of the committee, unless a member asks that a committee vote be taken on it. Senate impeachment rule XI grants to the chairman of an impeachment trial committee the power granted by impeachment rule VII to the presiding officer of the Senate to "rule on all questions of evidence including, but not limited to, questions of relevancy, materiality, and redundancy of evidence and incidental questions." This power is subject to the right of any member to ask that a formal vote be taken.

Because pretrial rulings by the chairman, in consultation with the vice chairman, may occur between meetings of the committee, the committee concluded that there should be a rule providing for distribution of rulings to committee members. Any member of the committee may then ask for the convening of a meeting and for a vote on the matter. This rule does not delegate new authority to the chairman to rule on evidentiary and other questions, but assures that the committee will be able to exercise its power to review and revise the chairman's rulings.

I hereby submit those rules and ask that they be printed in the RECORD, as follows:

RULE 1—QUORUM FOR THE TAKING OF PRETRIAL TESTIMONY

One member shall constitute a quorum for the purpose of a pretrial examination of a witness at which sworn testimony is heard and evidence taken.

RULE 2—PROCEDURE FOR PRETRIAL DISPOSITION OF PROCEDURAL MATTERS

All rulings made by the chairman, in consultation with the vice chairman, on pretrial procedural matters shall be distributed to each member of the committee and, consistent with rules VII and XI of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, shall thereafter stand as the ruling of the committee, unless any member shall ask that a meeting be convened to consider and vote on any such ruling.

COMMITTEE ACTION: Fifth Order

XXIX. ORDER DESIGNATING CONTENTS OF FINAL PRETRIAL STATEMENTS AND OTHER MATTERS

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-802D
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
ORDER DESIGNATING CONTENTS OF FINAL PRETRIAL STATEMENTS AND OTHER MATTERS
FIFTH ORDER

By its first Disposition of Pretrial Issues, dated April 14, 1989, the committee provided for the filing of Final Pretrial Statements by the parties and described in general terms certain of the matters to be contained in them. By its Second Order, dated April 21, 1989, the committee ordered that the Final Pretrial Statements be filed no later than June 21, 1989. In this order, we provide further information about the required content of the June 21, 1989 Final Pretrial Statements, and address several other matters in preparation for the evidentiary hearings which shall begin on July 10, 1989.

A. Final Pretrial Statements.

The parties should:

1. Statement of the Case. Provide a brief and general statement of the case as the party intends to present it at the impeachment trial proceedings.

2. Witnesses. List the names and addresses of witnesses whom the party wishes to call, with a statement of the nature of their testimony sufficient to illustrate the relevance of that testimony to these proceedings. If any expert witnesses are listed, provide a brief statement of the subject of their testimony and their qualifications as experts. The witness list should be framed within the hourly guidelines articulated in the committee's Fourth Order.

The committee shall treat the inclusion of an individual's name on the witness list as a request to the Senate that a subpoena be issued to that individual requiring his or her appearance at the impeachment trial proceedings. Upon receipt of the Final Pretrial Statements, the committee shall determine which subpoenas shall issue.

Unless good cause be shown for failure to include a witness on the Final Pretrial Statement, the parties shall not be permitted to call as witnesses persons not listed on the Final Pretrial Statement. If a party believes that there is good cause for naming additional witnesses after the Final Pretrial Statement has been filed, it shall, as soon as such witnesses become known, file with the committee, and serve on opposing counsel, the names and addresses of those witnesses, the subject matter of their testimony, and show good cause for their late addition to the witness list. The requirements of this paragraph shall not apply to rebuttal witnesses.

In order to facilitate the orderly issuance of subpoenas, the parties shall periodically be requested to provide information to the committee concerning their order of proof. At the present time, the House is requested to indicate, to the extent currently possible, the order in which it intends to call its witnesses during the direct presentation of its case, and the estimated duration of each of those witnesses' direct testimony. In the event that information should change in the time before commencement of the impeachment trial proceedings on July 10, 1989, the House shall promptly advise the committee of that fact.

3. Exhibits. Provide a numbered index of exhibits which the party intends to offer at the evidentiary hearings. The index should provide a specific description of each listed document or item of evidence, and, if the document or item of evidence has previously been introduced in related prior proceedings, such as in United States v. Hastings, or before the Investigating Committee of the Eleventh Circuit, a citation to the particular location in the prior record where the document or item of evidence was introduced.

Both parties shall exchange copies of their numbered exhibits, including any tape recordings, and shall provide a copy of their exhibits to the committee, on or before June 22, 1989.

Both parties shall, on or before June 27, 1989, file and serve a statement for each document or item of evidence listed on the opposing party's witness list which unequivocally states whether objection is made to admission of that document or item without need for formal proof as to its authenticity or genuineness, and where appropriate, its status as a record of a regularly conducted activity or a public record. In the event that such objection is made, the basis for the objection and the reason therefore shall be specifically stated.

The committee will review the foregoing statements and will enter an order stating whether, for each particular piece of evidence, the party offering the evidence need submit formal proof as to its authenticity, genuineness, or status as a record of a regularly conducted activity or a public record. Failure by the opposing party to make a reasoned and specific objection to any particular document or item of evidence will result in a finding by the committee that formal proof need not be made, but will leave the evidence subject to all other objections. It should also be noted that a finding that formal proof need not be made does not relieve the offering party of the need to explain the content or meaning of the document, should the party believe that such explanation is necessary.

Unless good cause be shown for failure to include a document or other item of evidence on the index of exhibits, documents or items not listed thereon shall not be introduced at the impeachment trial proceedings. If a party believes that there is good cause for amending its index of exhibits, it shall, as soon as the need for the amendment becomes known, file with the committee, and serve on opposing counsel, an amendment to the index together with copies of any new exhibit and a showing of good cause for their late inclusion on the index. The opposing party shall, three days after receipt of any such amendment, file and serve its objections regarding matters of formal proof to the exhibits included in the amended index.

4. Prior Testimony. The parties shall incorporate into their Final Pretrial Statements their June 14, 1989 filings identifying the prior testimony which they wish to offer into evidence. Copies of the proffered testimony, appended to the June 14, 1989 filing, need not be resubmitted.

With respect to each proffer of prior testimony identified by the opposing party in its June 14, 1989 filing, the parties shall state whether or not they object to introduction of that piece of prior testimony, and, if so, the specific nature of their objections.

5. Conduct of Evidentiary Proceedings. The parties shall state the amount of time which they intend to allocate to direct testimony, whether by prior or live testimony, and whether their preparation has shown that they anticipate any particular difficulties in the presentation of their case of which the committee should be made aware.

6. Legal Matters. The parties shall set forth the legal principles which each believes is applicable to each article of impeachment, or if appropriately grouped, set of articles, and which the party believes should guide the committee in determining the relevance and assessing the importance of particular evidence.

B. Other Pretrial Matters.

1. William Borders. On June 7, 1989, the committee adopted a resolution to direct the Senate Legal Counsel to apply to the United States District Court for the District of Columbia for an order immunizing from use in prosecutions any testimony by William A. Borders, Jr. The Senate Legal Counsel notified the Attorney General today, June 8, 1989, of the committee's intention to apply for an immunity order. The committee will be able to apply for that order on June 19, 1989, or on an earlier date if the Attorney General waives the ten-day notice requirement provided for by the immunity statute.

Neither party placed Mr. Borders on its preliminary witness list, although Judge Hastings has sought to reserve the right to call him. The committee has determined that it is important to have, prior to the Final Pretrial Statements, a clear public record of the final determination of each party whether the party will call Mr. Borders as a witness and, if the party does not intend to call Mr. Borders, a statement of why the party will not call him as a witness. The statements of both the House and Judge Hastings on this matter should be filed with the committee by June 15.

2. Pretrial Examinations. The committee will grant Judge Hastings' request for pretrial examinations of Gerald McDowell, Robert Richter, and Peter Marcoline. The parties should confer with each other, and consult with the committee, about suitable dates for these examinations. As the parties have been advised, the committee is attempting to facilitate access to relevant documents of the Department of Justice, including the Federal Bureau of Investigation.

Jeff Bingaman

Jeff Bingaman
Chairman

Arlen Specter

Arlen Specter
Vice Chairman

June 8, 1989

PRETRIAL FILINGS (continued)

XXX. Witnesses and Depositions (continued)

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

June 14, 1989

Honorable Jeff Bingaman
United States Senate
Washington, D.C. 20510

Dear Senator Bingaman:

Pursuant to its Fourth Order, issued on May 24, 1989, the Impeachment Trial Committee granted the House of Representatives' request for the deposition of Joanne Tyson Colt, who was a law clerk in Judge Hastings' chambers in October 1981. At the time the request was made, the House believed that Ms. Colt had not testified in any previous proceeding related to the charges contained in the Articles of Impeachment. Because she was named on Respondent's preliminary witness list, the House requested the deposition.

Yesterday it came to my attention that Ms. Colt did, in fact, testify before the Investigating Committee of the Eleventh Circuit. Because she has previously testified, it is no longer necessary for the House Managers to conduct the deposition. The House Managers, therefore, withdraw their request. My understanding is that the deposition will not go forward. We have informed Ms. Colt that the deposition will not be necessary.

Thank you for your consideration of this matter.

Sincerely yours,

Alan I. Baron
Special Counsel

cc: Hon. Arlen Specter
Professor Terence Anderson
Michael Davidson, Esq.

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re	)
	)
	)
IMPEACHMENT OF	)
JUDGE ALCEE L. HASTINGS	)

HOUSE MANAGERS' POSITION REGARDING TESTIMONY OF WILLIAM BORDERS

Pursuant to the Fifth Order of the Impeachment Trial Committee, dated June 8, 1989, the House Managers set forth below their position with respect to the testimony of William Borders.

As stated previously, the House Managers do not intend to call Mr. Borders as a witness at the trial of Respondent scheduled to commence on July 10, 1989. There are three reasons for this decision. First, the House believes that there is overwhelming evidence that Respondent engaged in a conspiracy to obtain a bribe and repeatedly made false statements at his criminal trial with respect to the conspiracy. Mr. Borders' testimony is unnecessary to prove the charges contained in the Articles of Impeachment.

Second, notwithstanding the availability of enforcement proceedings, it is unlikely that Mr. Borders will testify in a timely manner. Mr. Borders has consistently and repeatedly refused to testify regarding the matters charged in the Articles of Impeachment. When called as a witness at the hearings conducted by the House Subcommittee on Criminal Justice in this matter, Mr. Borders refused to testify based on various constitutional protections. His refusal to testify in the House is consistent with his past behavior. Mr. Borders served 30 days in prison for contempt rather than testify before the grand jury that investigated the bribery conspiracy involving Respondent.

Accordingly, there is no reason to believe that Mr. Borders will voluntarily testify if called at the evidentiary hearings conducted by the Impeachment Trial Committee. Therefore, as recognized by the Committee, the step of obtaining immunity must be taken and, subsequently, an action for criminal contempt would likely have to be initiated. The House recognizes that these steps are available and that the Impeachment Trial Committee has begun the process. However, it remains likely that the pursuit of Mr. Borders' testimony may significantly delay these proceedings. The House of Representatives does not want to initiate such delay.

Finally, the House Managers do not intend to call Mr. Borders as a witness because of serious doubts as to whether his testimony, if finally presented, would be reliable. Mr. Borders was convicted of serious felonies, going to the heart of his integrity and credibility.

For the foregoing reasons, the House Managers do not intend to call William Borders as a witness. The House, however, has no objection to the Impeachment Trial Committee calling him as a witness and taking the steps necessary to pursue his testimony.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /LEF
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 15, 1989

LAW OFFICES
KARR & McLAIN
9th FLOOR
1001 CONNECTICUT AVENUE N.W.
WASHINGTON, D.C. 20036

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

RECEIVED JUN 20 1989

June 16, 1989

The Honorable Jeff Bingaman
United States Senate
502 Senate Hart Office Bldg.
Constitution Ave. and
Second St., N.E.
Washington, D.C. 20510

The Honorable Arlen Specter
United States Senate
303 Senate Hart Office Bldg.
Constitution Ave. and
Second St., N.E.
Wasington, D.C. 20510

Dear Senators Bingaman and Specter:

I write to confirm that respondent's position concerning William A. Borders remain unchanged from the position articulated in A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial That is Fast To Respondent at 24-25 (April 1, 1989) and reiterated in Respondent's Preliminary Witness List at 1-2 (April 19, 1989) and at the proceedings on May 18, 1989, Transcript at 43-45. The necessity that I travel to Washington this week made it impossible for me to restate and develop those views fully. This I shall do upon my return to Miami. I will forward the resulting Statement of Respondent Concerning the Testimony of William A. Borders on Monday, June 19, 1989.

Sincerely,

Terence J. Anderson

cc: Representative John Bryant
c/o Impeachment Trial Staff

Michael Davidson, Esq. ✓
Senate Legal Counsel

Anthony J. Harvey
Committee Adminstrator

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

STATEMENT OF RESPONDENT CONCERNING THE TESTIMONY OF WILLIAM A. BORDERS

In 1983, the Investigating Committee undertook to conduct a fair, impartial, and thorough investigation into the accusations made against respondent. That committee obtained information that had been denied respondent, information showing that Borders had indeed made unfounded claims that he had the power to influence decisions before federal judges other than Judge Hastings. That committee learned that Joseph Nesline, the man most likely to know, had concluded that Borders's claim to have the power to influence Judge Hastings was as unfounded as Borders's other claims.[1]

That committee had the subpoena power and took effective action to compel testimony it thought might aid it in its quest to build a case *against* Judge Hastings.[2] That committee did not, however, take any action to compel the testimony of William A. Borders. That failure, in context, is surely one measure by which the fairness, the impartiality, and the thoroughness of the investigation conducted by the judiciary may properly be assessed.

---

[1] *See, e.g., A Statement Concerning Respondent's Need for Time and Funds to do Now What the House Should Have Done Before Impeachment: Three Illustrations With Supporting Documents* (May 19, 1989); *Statement* at 2-4, 8; *Appendix to Statement* at 6-8, 18.

[2] *See, e.g., In re Certain Complaints Under Investigation by an Investigating Committee of the Judicial Council*

The House also undertook to conduct a fair, impartial, and thorough investigation into the accusations against respondent. The House assigned responsibility for carrying out that undertaking to its Committee on the Judiciary. That committee in turn delegated the responsibility to its Subcommittee on Criminal Justice. The chairman of that committee and that subcommittee early and jointly assured respondent that the inquiry would indeed be fair, impartial, and thorough.[3]

That committee and that subcommittee started with the records that had been made available to the Investigating Committee. That committee and that subcommittee also had, from the outset, respondent's *Provisional Report* which spelled out in some detail the deficiencies in the Investigating Committee's investigation.[4] That committee and that subcommittee had access to the subpoena power of the United States House of Representatives. That committee and that

---

of the Eleventh Circuit, 783 F.2d 1488 (11th Cir.) (special panel), *cert. denied* 477 U.S. 904 (1986).

[3] *See, e.g., Appendix III* to *Impeachment Inquiry Hearings (Hastings)* at 30-50 (exchange of correspondence).

[4] *A Provisional and Preliminary Report on the Proceedings Against United States District Judge Alcee L. Hastings: 1981-1986* at 24-39 (summary), 96-140 (detailed account), 161-66 (conclusion), *reproduced* in App. III at 98-114, 170-214, 235-40.

subcommittee used its subpoena power to obtain interviews, depositions and evidence in its quest to build and refine the case *against* Judge Hastings. That committee and that subcommittee took no action to compel Borders's testimony.[5] That failure, in context, is surely one measure by which the fairness, the impartiality, and the thoroughness of the inquiry conducted by the House may properly be assessed.

Respondent does not have and has not had the resources or the power to conduct additional investigations that would have been necessary to assure that the evidence available at this stage was the evidence that would have been available had the prior investigations been fair, impartial, and thorough. Respondent has not had the resources or the power necessary to conduct the investigations necessary to determine whether Borders could or should be compelled to testify. That is a burden that belonged to the House. It is just another of the burdens the House has sought to transfer unfairly to the respondent. Respondent rejects the attempt.

Respondent's position and the information upon which it is based remain unchanged from that expressed in his prior submissions addressing the point.[6] Respondent reserves the right to call Mr. Borders at any time if the then circumstances warrant that action. Respondent's view as to when the decision might be made was aptly expressed in a colloquy at the conference on May 18, 1989:

---

[5] House Jud. Comm., *Impeachment of Judge Alcee L. Hastings*, H. Rep. 810, 100th Cong., 2d Sess. at 11-12; *see also Impeachment Inquiry Hearings at 224-26.*

[6] *See A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial That is Fair to Respondent* at 24-25 (April 1, 1989), *Respondent's Preliminary Witness List* at 1-2 (April 19, 1989); and letter dated June 16, 1989 from counsel for respondent to chairman and vice chairman of committee.

> The Vice Chairman. When do you expect to know whether you would press to have Borders appear as a witness?
>
> Mr. Anderson. Senator Specter, if Borders called me on the last day of trial and said, "Gee, I'm ready to come forward," I would know it then. If he walked in the door and said he was ready just before you recessed, I would ask you to extend your time to hear the man out.

Transcript at 45-46.

Respectfully submitted,

Terence J Anderson

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

June 20, 1989

XXXI. USE OF PRIOR TESTIMONY

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

RECEIVED JUN 1 4 1989

House Managers' Proposed Use of Prior Testimony

The House will seek to offer at trial the prior testimony of the witnesses listed in group I, below, in lieu of live testimony, for the reasons stated therein. In group II, the House has listed witnesses whose prior testimony will be offered if, during the course of the evidentiary hearings, it appears that there will be insufficient time to put that witness on the stand. With respect to all witnesses, if the prior testimony is admitted, the House does not intend to call these witnesses in its case in chief. Accordingly, the House anticipates that a considerable amount of trial time will be saved by permitting the use of this prior testimony.[1]

GROUP I

(1) Richard Lowe

Mr. Lowe is a supervisor of ticket control and custodian of records for Eastern Airlines. The House seeks to offer

---

[1] This memorandum concerning proposed reliance on prior testimony by the House is being prepared prior to determination by the Senate Impeachment Trial Committee on the adoption of stipulations. Accordingly, the House may seek permission to amend its submission on its use of prior testimony.

Mr. Lowe's complete testimony before the Investigating Committee of the Eleventh Circuit (hereinafter, "IC") concerning information contained in Eastern's records for flights for Judge Hastings on or about June 17-18, 1981, July 17-20, 1981, September 11-14, 1981, and October 9, 1981, and for William Borders for flights on or about July 21-22, 1981, and September 11, 1981. Mr. Lowe also testified as to seat availability on Eastern flight no. 197 on October 9, 1981.

The documents to which the witness referred are also offered and are attached hereto as Exhibits A(1)-(28).[2]

Neither Mr. Lowe nor any other airline expert testified at trial. Both his testimony and that of Mr. Washington (see below) are technical in nature, and their credibility should not be an issue.

(2) Willie James Washington

Mr. Washington is a reservation specialist working for Eastern Airlines, who is familiar with that airline's computer reservation record system. The House seeks to offer Mr. Washington's testimony before the IC concerning information contained in Eastern's records for flights for William Borders for flights on September 12 and 13, 1981, and for Judge Hastings for flights between September 10, 1981 and September 14, 1981. That testimony is attached hereto as Exhibit B; the documents referred to in the course of that testimony are also offered, and are attached hereto as Exhibits B(1)- B(8).[3]

---

[2] The attached documents also bear the following IC exhibit numbers which were referred to during the IC testimony: IC 35a, 35b, 35c, 48, 49, 49a, 49b, 50, 51, 51c, 52, 36a, 36b, 36c, 37a, 35, 36, 38, 40, 42, 43, 44, 37, 45, 46, 47, 54, 55. Although the testimony refers to IC exhibits 52a and 53, no such exhibits are not listed in the IC record.

Explanation: In his IC testimony, Mr. Washington explained the meaning of symbols and other notions in the flight reservation histories for the above described flights. Neither he nor any other airline expert testified at trial. Mr. Washington's testimony is technical in nature, and his credibility should not be an issue.

(3) Daniel Simons

The House seeks to offer the grand jury testimony of Mr. Simons, and rely in particular on pages 1-18 (through line 3). The entire grand jury testimony is attached hereto as Exhibit C. Also proffered is Mr. Simons' IC testimony; the House will rely, however, only upon the following portions of Mr. Simons' testimony before the IC: Vol. VIII, pages 32 (line 24) through p.36 (line 13). That testimony is attached hereto as Exhibit D.

Explanation: Mr. Simons was a law student working in Judge Hastings chambers in October, 1981. The proffered grand jury testimony concerns his recollection of a conversation on October 5, 1981 between the law clerk responsible for the Romano case, Jeffrey Miller, and Judge Hastings, which Mr. Simons overheard. In addition, Mr. Simons testified that he did not know and had not heard of William Borders, and knew of no reason why Mr. Borders would have known that an order was coming out on October 6, 1981. In the proffered IC testimony, Mr. Simons stated that neither he nor any one else on Judge Hastings' staff, to his knowledge, knew William Borders nor had any staff person provided ex parte communications with respect to any matters pending in Judge Hastings' chambers.

---

[3] These documents are referred to in the IC testimony as IC Exhibits 39, 43, 51, 35, 37, 40, 41, and 42.

Mr. Simons' prior testimony is sought to be offered in lieu of his appearance because he is unavailable for trial due to his medical condition and his absence from the United States. These facts are supported by the Declaration under Penalty of Perjury attached hereto as Exhibit E, by Mr. Jay Simons, Mr. Daniel Simons' father and the managing partner of the law firm where his son was employed until he became ill with leukemia.

Mr. Simons also testified on two occasions before the IC. In his first IC appearance, when his grand jury testimony was read to him, Simons testified that he remembered "questioning along that line, and answering something to that effect." See, for example, Vol. VIII, pp. 22-26, attached hereto as Exhibit F. With respect to all questions concerning communications with Judge Hastings, Mr. Simons asserted a privilege. Following litigation concerning that assertion of privilege, Mr. Simons again appeared before the IC. At that time, Mr. Simons was unable to recall with any specificity the conversation of October 5, 1981, about which he had testified in the grand jury.

See, for example, Vol. XXVII, pp. 10-11, attached to Exhibit G. Accordingly, Mr. Simons' grand jury testimony on this subject, rather than his IC testimony, is offered.[4]

The proffered IC testimony, relating to Mr. Borders and _ex parte_ communications, is sought to be offered because the grand jury testimony from Mr. Simons does not extend to his knowledge of what other members of Judge Hastings' staff knew or did.

(4) _Neal Sonnett_

The House seeks to offer Mr. Sonnett's IC testimony, and if that testimony is admitted, will rely specifically upon pages 90-91 and 126-146. That testimony and the documents referred to during the relied-upon portion of the IC testimony, are attached hereto as Exhibit H and H(1) and (2).[5]

Explanation: Mr. Sonnett represented Frank and Thomas Romano following their conviction in the criminal trial before Judge Hastings. The relied-upon portions of the proffered prior testimony pertains to Mr. Sonnett's knowledge of contacts his clients received from Philip "Brother" Moscato, on behalf of a

---

[4] The House recognizes that it had not previously sought permission to offer grand jury testimony, and that the Senate Impeachment Trial Committee's Fourth Order may not have contemplated reliance on grand jury testimony. However, in view of the special circumstances regarding Mr. Simons, i.e. the greater reliability of his nearly contemporaneous grand jury testimony, and his unavailability as a witness, the House requests that the Committee permit the use of this prior testimony.

[5] Those documents are referred to as IC 253 and 254 in the IC transcript.

Washington "bigshot," who claimed to have connections with the judge.

Mr. Sonnett testified on behalf of Judge Hastings at his criminal trial. However, that testimony pertained to matters not included in the above-proffered testimony.

So far as the House is aware, the Respondent has never questioned Mr. Sonnett's credibility, and therefore, there is no reason to believe it is at issue here.

(5) Madeline Petty

The House seeks to offer the complete testimony of Madeline Petty at the criminal trial of Judge Hastings and before the IC. That testimony is attached hereto as Exhibits J and K, respectively. The documents referred to in Ms. Petty's IC testimony are attached hereto as Exhibits K(1) - (5).[6]

Explanation: Ms. Petty was a social acquaintance of Mr. William Borders in 1981. She was involved in the planning of the trip by Mr. Borders to Las Vegas to attend the championship boxing match on September 16, 1981. She also accompanied Mr. Borders on that trip, September 15 to September 18, 1981. In addition, several calls were made from Judge Hastings' residence to Ms. Petty's home during the time of the alleged conspiracy in 1981.

---

[6] The equivalent IC exhibit numbers are IC 67, 2046, 57, 58, and 59.

Ms. Petty has testified concerning these matters on two occasions. The first time was at the criminal trial, when her testimony was limited to events surrounding the trip to Las Vegas. Before the IC, Ms. Petty was questioned about both the Las Vegas trip and the telephone calls.

During the criminal trial, Ms. Petty's credibility was not challenged. Nor is the House aware of any reason to believe that her credibility before the IC would be in question.

GROUP II

(6) Joel Hirschhorn

The House seeks to offer the testimony Mr. Hirschhorn presented to the IC, attached hereto as Exhibit L. The portions of the testimony upon which the Managers rely are found at pages 91-113, 139-147, line 12, 206, 227-230, and 239. Also attached to Exhibit L as Exhibits L(1)-(6) are the documents used during the relied-upon portions of the witness' examination.[7]

Explanation: Mr. Hirschhorn represented Judge Hastings in his criminal proceedings from shortly after the indictment until March 2, 1982. He participated in the exchange of documents with the government pursuant to the court's first reciprocal discovery order. Not included in the defendant's first production were the alleged letters concerning Hemphill Pride purportedly referred to in the October 5, 1981 taped conversation of Judge Hastings and William Borders. The testimony elicited in indicated pages of the attached IC proceeding concerns this discovery process, particularly as it relates to the fact that Mr. Hirschhorn never saw any such letters.

---

[7] The equivalent IC exhibit numbers are IC 421, 422, 420, 418, 419 and 176.

The credibility of this witness is not at issue. Judge Hastings has also testified that he did not show Mr. Hirschhorn the alleged letters because he did not trust his attorney. United States v. Hastings, at Vol.XXI, page 2249, 2258-59.

Mr. Hirschhorn has not testified in any other related proceedings, except very briefly in the context of a proffer made outside the presence of the jury in United States v. Hastings. That proffer concerned a memorandum prepared by Mr. Hirschhorn; the proffer was withdrawn by the defendant when the court ruled that the attorney-client privilege would be waived as to the entire document if it was offered into evidence. (See, trial transcript at pages 2391-2410.)

Mr. Hirschhorn has advised the Managers that he has not been released from the attorney-client privilege previously asserted by Judge Hastings. (See letter attached hereto as Exhibit M) The Managers therefore do not anticipate that they will or can seek testimony from Mr. Hirschhorn beyond the limited subject discussed in the appended testimony from the Investigating Committee.

(7) Carolyn McIver

(8) Andrew Chisholm

(9) Eleanor Golar-Williams

In his trial testimony, Judge Hastings testified that he or Mr. Borders made telephone calls to Hemphill Pride at certain times and at certain telephone numbers. Ms. McIver, Mr. Chisholm, and Ms. Golar-Williams are subscribers to the telephones numbers to which Judge Hastings referred in his testimony. They each testified at the IC that Mr. Pride did not have access to their telephone. Their testimony is attached hereto as Exhibits N, P, and Q, respectively.

Explanation: None of these witnesses testified at any other proceeding relating to this matter. Their credibility is not at issue, since in his Answer to the Articles of Impeachment relating to these instances of allegedly false testimony, Judge Hastings admitted that his testimony was false.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 14, 1989

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re	)
	)
	)
IMPEACHMENT OF	)
JUDGE ALCEE L. HASTINGS	)

Supplement to House Managers' Proposed Use of Prior Testimony

In its submission filed yesterday pursuant to the Fifth Order of the Senate Impeachment Trial Committee, the House Managers inadvertently omitted the prior testimony of the witness described below. The House seeks to have this testimony admitted in lieu of live testimony (category I). In view of the fact that this submission is being provided to the Respondent at the same time that he has asked to receive the initial submission, and because of the limited delay in submission to this Committee, the House respectfully requests that this submission be accepted for consideration.

(10) Laverne Boone

Ms. Boone is a supervisor of ticket control and custodian of records for Eastern Airlines, the position held by her predecessor, Richard Lowe. She testified on two occasions before the Investigating Committee of the Eleventh Circuit. Her testimony concerned airline records reflecting the flight plans of, inter alia, William Borders on May 5, 1981, July 9-10, 1981, and September 12, 1981; William Dredge on May 28-29, 1981, and

Judge Hastings on May 5- 10, 1981, June 17-18, 1981, July 7, 1981, July 18 -22, 1981, and September 10-14, 1981. That testimony is attached hereto as Exhibit R. The documents referred to in the testimony are attached hereto as Exhibits R (1)- (37).[1]

As with the other airline records experts whose prior testimony previously has been submitted, Ms. Boone did not testify at trial. Since her testimony is technical in nature, credibility should not be an issue.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks	Hamilton Fish, Jr.
John Conyers, Jr.	George W. Gekas
Mike Synar	
John Bryant	

---

[1] The equivalent IC exhibit numbers, IC 2025 - 2045 and 2350 - 2363, and 43 and 44, referred to in the testimony, also appear on the documents.

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 15, 1989

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

Second Supplement to House Managers' Proposed Use of Prior Testimony

In connection with the previously submitted prior testimony of Richard Lowe, supervisor of ticket control and custodian of records for Eastern Airlines, the following document was admitted during the course of his testimony before the Investigating Committee of the Eleventh Circuit, and is submitted herewith: IC Exhibit 55A, Timetable for Eastern Airlines, effective October 1, 1981, attached hereto as Exhibit A(29).

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 19, 1989

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

Third Supplement to the House Managers' Proposed Use of Prior Testimony

The House Managers request that the testimony of Louima Romano and H. Paul Rico be added to those witnesses previously identified for whom the House has requested the admission of prior testimony in lieu of live testimony (category I).

(11) Louima Ruth Romano

Mrs. Romano is the widow of Frank Romano, one of the defendants in United States v. Romano. She testified at the IC as to the fact that she received a telephone call from Philip Moscato for her husband, while her husband and his brother were in California in April, 1981, and that she then relayed Moscato's message to Frank Romano.

At this time, the House has been unable to locate Mrs. Romano. The House requests that her prior testimony be admitted, since her testimony is extremely limited and her credibility does not appear to be in issue. Mrs. Romano's testimony is attached hereto as Exhibit S.

(12) H. Paul Rico

Mr. Rico is a former FBI agent who impersonated Frank Romano in the undercover investigation of the bribery conspiracy. The House of Representatives requests that particular portions of Mr. Rico's testimony in *United States v. Hastings*, specifically pp 314-319 and 345-366, be accepted by the Impeachment Trial Committee in lieu of live testimony. The House offers this testimony for the sole purpose of establishing what William Borders wrote down for Mr. Rico during their September 12, 1981 meeting at the Miami International Airport. What Mr. Borders wrote down at that meeting, including the term of $150,000, has not been disputed by Respondent.[1] Attached hereto as Exhibit T is a copy of H. Paul Rico's complete testimony in *United States v. Hastings*.

Respectfully submitted,

The United States
House of Representatives

By Alan I Baron /LCF
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

---

[1] *See* Respondent's Memorandum in Support of Motion to Dismiss Articles I through XV Without Trial Based Upon 1983 Jury Verdict and Lapse of Time, reprinted in S.Doc. 101-4, 101st Congress, 1st Sess. at 29.

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 23, 1989

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

STATEMENT ON BEHALF OF RESPONDENT CONCERNING USE OF PRIOR TESTIMONY

Respondent objects to the use of prior testimony, except in those circumstances where its admission would be permissible for non-hearsay purposes or under one or more established exceptions to the hearsay rule. On that basis, respondent intends at this time to offer:

1. The entire transcript of the trial proceedings in *United States v. Hastings*, No. 81-596-CR-ETG (S.D. Fla. 1983). This transcript will not be offered to prove the truth of the matter asserted by the witnesses at that trial. It will be offered to prove that accusations made in Articles I through XV were fully presented at that trial and were committed to the jury that acquitted respondent. A comparison of the evidence presented at that trial with that presented on behalf of the House in this case of impeachment will provide a basis upon which Senators may decide what weight or deference they wish to accord that verdict in

casting their votes in this case of impeachment.[1] Because of its bulk and because respondent's copy of this transcript is not the best available copy, respondent has not submitted a copy with the statement.

2. Respondent will offer the transcript of the testimony of Alvoyd Merritt from the 1983 trial. Mr. Merritt is dead and thus is an unavailable declarant.[2] Although there may be a question in the minds of some whether the Justice Department was a true "predecessor in interest" to the House, it is clear that the prosecutors had an opportunity and similar motive to develop Mr. Merritt's testimony on cross-examination. Thus, this testimony has "equivalent circumstantial guarantees of trustworthiness" and its admission will serve the general purpose of the rules of evidence and the interests of justice.[3] A copy of the transcript of Mr. Merritt's testimony is attached.

Counsel for respondent cannot determine whether there is additional former testimony by unavailable declarants that will be relevant to his case until the managers have presented evidence in support of their accusations. For example, Andrew Mavrides is now dead and portions of the testimony he gave before the Investigating Committee may be made relevant by evidence presented by the House. Accordingly, respondent reserves the right to submit additional testimony made relevant by the evidence offered on behalf of the House.

---

[1] *See, e.g.*, 135 Cong. Record S. 2804 (Mar. 16, 1989) (explanatory statement by Senator Specter); *see also Completed and Corrected Response to Stipulations Proposed by the House* at 31-32 (for further explanation of intended use).

[2] *See, e.g.*, Rule 804(a)(4), Federal Rules of Evidence.

[3] *See, e.g.*, Rule 804(b)(1) and b(5), *id.*

In order to avoid debate that may be unnecessary, respondent will further develop the grounds for his objections to the use of former testimony in this case, if necessary, after his counsel has reviewed the managers' statement of the former testimony they would offer.

Respectfully submitted,

Terence J Anderson

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

June 14, 1989

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

MOTION FOR RECONSIDERATION AND RESCHEDULING

Respondent moves that the Impeachment Trial Committee reconsider the schedule established for this case of impeachment and other requirements imposed by its pre-trial orders in this case. Respondent and his counsel cannot physically meet the demands of the present schedule, and those demands could not produce evidentiary hearings that were orderly, let alone fair. The developments that compel reconsideration and the specific relief required are developed below.

DEVELOPMENTS THAT MANDATE RECONSIDERATION

In the present case, the extent of the time required has two components -- the professional and the human. The committee cannot properly demand (or frankly expect) respondent's counsel to submit a crucial document which he has not had time to prepare in a manner that satisfies at least the minimum requirements of competence mandated by the standards of professional responsibility. Nor can the committee demand or expect efforts that exceed the human capacity of those available to do the work. The present schedule does not satisfy either component. In order to eliminate any ambiguity, the undersigned represents that the present schedule imposes demands that cannot humanly be met. The production of documents mandated by the schedule to date or otherwise necessary to assert and protect respondent's rights have consumed all of the time counsel has physically been able to devote and all of the other human resources available to respondent. Neither he nor those available to assist can perform the tasks necessary to complete the mandated pre-trial statement or prepare this case for trial on the present schedule. Given the committee's decision to deny respondent financial resources, he submits the committee must adjust its schedule to permit respondent to proceed within the limits of the resources that the committee knows are available to him.

At the outset of the committee's work, respondent described the legal and other resources that had been arrayed against him.[1] He submitted a reasonable estimate of the amount of properly supported lawyer-time that would be required to redress the imbalance and to prepare and conduct a fair defense.[2] He requested the resources necessary to enable him to prepare with proper dispatch[3] and asked that his counsel be allowed 180 days to redress the imbalances that had been created by the disparity in the resources available to his accusers and the manner in which those resources had been deployed over the preceding years.[4]

---

[1] *See, e.g.*, "Respondent's Need for Funds, Time, and Discovery: Some Illustrative Materials" (submitted April 12, 1989) at 3-4 (for a concise summary).

[2] *See, e.g., Motion Requesting Funds for Respondent's Defense* at 6-7 (March 29, 1989).

[3] *Id.* at 1, 6-10.

Whatever its then view, the Impeachment Trial Committee must now be aware of the magnitude of the tasks required to prepare this case for trial. At the outset, the committee had available the services of Senate Legal Counsel and his staff as well as the services of the staff working for its individual members. Since that time, the burdens imposed *upon the committee* have required it to seek and the Senate to authorize the employment of a committee administrator, at least two counsel, and a staff assistant to aid it in its work.[5] The House managers continue to require the services of their fully supported, four-lawyer impeachment trial staff and other counsel from the regular staff of the House Judiciary Committee.[6] The discovery authorized by the committee has produced a substantial volume of documents that had not previously been available to respondent or his counsel.[7]

---

[4] *See A Further Memorandum on Pre-Trial and Trial Procedures Necessary for a Trial That is Fair to Respondent* at 1-13 (April 1, 1989). Even at that stage the demands imposed had become such that the Washington law firm which had aided respondent and his principal counsel for the preceding five years found it necessary to withdraw from the case for both financial and professional reasons. *See* letter dated April 7, 1989, from Messrs. Karr & McLain to Senator Bingaman.

[5] S. Res. 123 (adopted May 10, 1989). The committee's letterhead indicates the initial staff. We know that additional staff has been retained, but understand that they may have been added to assist the *Nixon* Impeachment Trial Committee.

[6] The staff appearing with the managers at conferences and depositions in this case has confirmed that other counsel have taken a role that is more than nominal. *See, e.g.,* Transcript of Closed Proceedings (Deposition of McDowell) at 1-4 (June 15, 1989) (for list of those attending on behalf of the House).

The Impeachment Trial Committee must now also recognize that respondent and his counsel cannot physically meet the demands of the existing schedule. The committee cannot responsibly deny that respondent and his counsel have diligently sought to meet the prior deadlines imposed by the committee's orders and to pursue, through discovery, information and materials that should have been available to respondent far earlier. Even with these efforts, the limited discovery authorized to date is not complete. To date, respondent and his counsel have neither the information nor the human resources necessary to enable preparation of a responsible pre-trial statement by Wednesday, June 21, 1989. Moreover, there must be some minimally decent intervals between the completion of discovery, the submission of final pre-trial statements, and the commencement of evidentiary hearings. This, the present schedule simply does not allow.

The Impeachment Trial Committee should also now be aware that its determinations of the time it will take to conduct and complete proper evidentiary hearings and how that time should be allocated were, at a minimum, premature. *CBS v. Westmoreland* was a civil case in which both sides had simultaneous and complete access to civil discovery procedures. Both parties were on an equal footing in advising the court on the amount of trial time reasonably required and how it should be allocated. *After* discovery is complete and the parties have had an opportunity to analyze and organize the available evidence in this case, it may *then* be appropriate to establish time limits and allocations as an incentive to encourage stipulations and limit the presentation of less important testimony. Such determinations cannot be properly made, however, before discovery is complete and the parties have achieved parity, insofar as it is to be allowed. Moreover, whatever the true nature of a case of impeachment, the allocations must reflect the reality of the situation in which the parties have been placed by other determinations.[8]

---

[7] *See, e.g.,* "FBI Files Produced By the House of Representatives," memorandum appended to *Respondent's Memorandum on Scheduling and Other Pending Concerns as of May 10, 1989.*

The Impeachment Trial Committee must now adjust the schedule it initially established simply to accommodate the requirements it concluded were necessary for a trial that was fair in light of intervening events and developments.[9]

---

[8] Respondent appreciates the steps the committee has taken to provide critical discovery. The House, however, obtained its discovery *ex parte* long ago, for the most part well before the hearings in its impeachment inquiry. The disparity in time and resources remains, and respondent is not and will not be in a position comparable to that obtained by General Westmoreland before trial. Every witness the House will call and most of those they will confront will have been previously examined by their staff concerning every point relevant to the House's case. Many of the witnesses respondent is likely to confront will not have been examined by his counsel, and his direct and cross-examinations will necessarily require more time. The disparity will increase if the House is permitted to use prior testimony by witnesses who have not been examined by respondent.

[9] Respondent recognizes that the Impeachment Trial Committee has rejected his views on the time, resources, and discovery necessary for a trial that comports with the es-

The committee determined that respondent was entitled to limited discovery. The deposition of William Dredge will not take place until Wednesday, June 21st. That date was established to accommodate the schedule of Dredge's attorney and to assure the presence of a member of the committee, not to accommodate the needs of respondent's counsel. John Doar has advised that the inspection of documents authorized by the Investigating Committee must be made at a time when he could be present. His travel schedule was such that Friday, June 23rd, was the first date on which he and respondent's counsel could meet in his office in New York.[10] Document production by the FBI and the Justice Department is incomplete in at least some respects,[11] and no determination has been made regarding Nesline's competency.[12] In short, discovery will not be complete by the date on which final pre-trial orders are due under the existing schedule. In

---

sential requirements of fairness. He recognizes that the committee is unlikely to revise those views, absent intervention by the courts. He here asks only that the committee reconsider its scheduling and trial procedures in view of the situation that now exists and in light of the determinations it has made.

[10] Counsel for respondent attempted to schedule an examination in New York for May 19, 1989, the day after the last conference, and again for June 16, 1989, the day after the depositions of Messrs. McDowell and Marcoline. On both occasions, Mr. Doar had travel commitments that took him out of the city.

[11] For example, the prosecution memorandum and other memoranda prepared by Messrs. Richter and Weingarten concerning the prosecution constitute prior written statements by persons who are listed as witnesses. These documents must be made available, in unredacted form, to permit proper examination and cross-examination.

[12] Insofar as counsel for respondent can determine, based upon a re-examination of the materials supplied by the House managers, the materials supplied to the committee concerning this issue have *not* been supplied to him.

that context, the Impeachment Trial Committee should also recognize that respondent must be allowed some interval between the completion of discovery and the filing of pre-trial statements, an interval at least sufficient to enable his counsel to assimilate the material necessary to complete a pre-trial statement.

Respondent has never had funds sufficient to obtain the kinds of assistance that have been available to his accusers throughout. The committee's decision to defer any action on his request for funds until after the trial has forced respondent to proceed without adequate resources by any measure. Only two of respondent's counsel have a significant command of the record -- the undersigned and Patricia Graham Williams. Only one of those, the undersigned, is economically able to devote substantially all of his time to the preparation of this case. The undersigned freely admits that he cannot now and could not before match the time devoted by the four special counsel and numerous staff counsel available to assist the managers. The committee's decision to deny respondent funds has cast him in the role of David. At a minimum, the committee must acknowledge the consequences by affording the slingshot of time to counter the weapons available to the federally funded Goliath he must meet in the Senate's arena. Simply stated, the present schedule cannot hold.

THE SPECIFIC RELIEF REQUIRED: TWO ALTERNATIVES

There are two approaches the Impeachment Trial Committee could take in addressing the present problem. It could now acknowledge that the present schedule is inconsistent with the goals of producing evidentiary hearings that are either orderly or fair and could adjust its schedule to allow respondent sufficient time to bring his trial preparation to a level that will make it possible for the committee to conduct hearings that are at least orderly. That would require that the committee allow respondent at least thirty days to complete discovery and submit a proper pre-trial statement.

In the alternative, it could attempt to maintain its present schedule for commencing evidentiary hearings, admonish respondent for allowing his financial handicaps to intrude upon the scheduled date for submitting pre-trial statements, and direct that he now comply. In respondent's view, the former approach would better serve the committee's and the Senate's interests. In order to demonstrate the basis for that view, respondent describes briefly the consequences likely to flow from each approach.

The Decent Approach and Its Consequences

Respondent proposes and requests that the Impeachment Trial Committee establish a schedule that will permit the orderly preparation and conduct of evidentiary proceedings in this case in light of the circumstances that now exist. Specifically, he proposes:

1. The committee should extend the time within which respondent may submit his pre-trial statement by thirty days, until July 21, 1989. That period will be sufficient to enable respondent's counsel to organize the witnesses and documents available for trial and prepare a pre-trial memorandum that satisfies the purposes as well as the letter of the committee's orders.

2. The committee should invite the parties to submit, within seven days thereafter, by July 28, 1989: (a) further proposed stipulations of fact and documents, and (b) memoranda concerning the time needed for the hearings, how it should be allocated, and other matters that might properly expedite the hearings. Under these procedures, the committee would then have a meaningful record upon which to address these issues and establish a proper schedule for the evidentiary hearings.

3. The committee should schedule and conduct a pre-trial hearing and issue a pre-trial order establishing the schedule for the evidentiary hearings before the Senate recesses in August. Depending upon the scheduled commencement of hearings (see below), this would enable the parties to engage in *meaningful* negotiations concerning stipulations and other matters necessary to enable each side to conduct the necessary examination and cross-examination of witnesses with the framework established by the committee's order.

4. The committee should schedule the evidentiary hearings to begin during the August recess, in September,[13] or, preferably, immediately after the first session of the 101st Congress adjourns.[14] Either of the first two suggestions would permit an earlier completion of those hearings. The first and the third might disrupt the recess schedules of the committee's members, but either would also permit the members to devote their attention to these hearings without the distractions of the Senate's legislative business -- a procedure more consistent with the practice in cases of impeachment as reflected in the Senate's rules for such cases.[15] Respondent submits that the third is the most advantageous.

---

[13] Respondent understands that evidentiary hearings in the case against Judge Nixon are scheduled to begin on September 6, 1989. Counsel for Judge Nixon had advised the Rule XI committee appointed in that case that the "evidentiary portion of the case likely could be completed in eight full hearing days." *See Memorandum in Support of Walter L. Nixon, Jr.'s Motion for Preliminary Injunction* in *Hastings v. United States Senate*, Civ. No. 89-1602 (D.D.C.). Those hearings should thus be completed by September 15, 1989.

[14] The Senate, as a continuing body, may of course continue its work through committees during a recess by Congress. *See, e.g., McGrain v. Daugherty*, 273 U.S. 135, 181-82 (1926). The House's ability is more constricted, but its precedents establish its view that its committees may work during the recess between the two sessions of a single Congress. *See, e.g., 4 Hind's Precedents* § 4545 ("Committee may by the House be empowered to sit during a recess that is within the term of the Congress, but not after the expiration of the term.").

[15] It has been the practice of the Senate to suspend the legislative business during the conduct of a trial in a case of impeachment. *See* Rules XII and XIII, *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials;* see also S. Doc. 33, 99th Cong., 2d Sess. at 33-34, 56 (collecting and summarizing relevant precedents).

This schedule will serve the committee's and the Senate's interests as well as affording respondent some measure of needed relief. The evidentiary hearings may be delayed, but they will be more orderly and will produce a better record. The time necessary for printing the record, for the submission of proper post-hearing memoranda, and for the preparation of the committee's report would, in view of the recommendations submitted by the Senate Committee on Rules and Administration, preclude a vote by the full Senate in this session in any event.[16] Thus, the modest delay in the hearings required to accommodate respondent's needs for proper preparation is unlikely to delay the final outcome significantly.

Respondent recognizes this alternative proposal conflicts with the committee's stated intent to complete the evidentiary hearings by August 6, 1989. That determination, however, was made before the committee had or could have had a fair appreciation of what was entailed in the preparation of this case for trial. The committee now has a basis for making that assessment. Moreover, the committee is now fully aware of the financial constraints under which respondent and his counsel have operated and must operate. Given its assessment of the staff and facilities necessary simply to aid the committee in preparing for and conducting the trial, respondent submits that the committee cannot properly ignore the reality of his situation and the needs of this case. The modest relief requested here may in some degree inconvenience the members to whom responsibility for the proper conduct of these hearings has been entrusted, but it will enable the committee to execute that trust with greater care and will not significantly delay the Senate's final vote in this case. That modest relief should be granted.

---

[16] *See* S. Rep. 1, 101st Cong., 2d Sess. at 112-14.

The Mean Approach and Its Consequences

Respondent and his counsel could not physically produce a pre-trial statement significantly in advance of the scheduled date for commencement of evidentiary hearings. The only significant support staff and facilities available to respondent and his counsel are located in Miami, Florida, and this work must be done there. Respondent's counsel must leave Miami on Tuesday, June 20, in order to be in Washington on Wednesday for Dredge's deposition and on Thursday for the scheduled conference. Respondent's counsel is scheduled to be in New York on Friday to examine documents the Judicial Council of the Eleventh Circuit have agreed he may inspect in John Doar's offices. Depending upon the amount of time necessary for that examination, he will return to Miami on Friday or, more likely, Saturday. Thus, the next working day respondent's counsel will be able to devote to tasks necessary to prepare a pre-trial statement is likely to be Sunday, June 25, 1989.

Respondent's counsel could prepare a pre-trial statement that would address, in some form, all the components specified in the committee's orders before the hearings began, if they devoted substantially all their available time to that task. The resulting product would not satisfy the goals the committee sought to realize through this procedure.[17] The witness list would necessarily be over-inclusive and would still not be complete in significant respects. The demands imposed by other pre-trial activities authorized or mandated by the committee's prior orders have made it impossible for respondent's counsel to complete the interviews and investigations necessary to agree upon final specifications.[18] Preparation of the statement would delay them further. More severe problems would infect the list of potential exhibits. Respondent is still receiving documents through discovery and will require production of documents or portions that have been withheld. Moreover, under this schedule, some of the documents necessary for trial would have to be first produced by witnesses pursuant to subpoenas to testify at trial.

As a result, respondent's trial preparation would be ongoing, and he would be supplementing and amending his statement as appropriate cause emerged. Respondent submits that evidentiary hearings conducted in this manner would be neither orderly nor fair. In view of the reasonable alternative described above, he submits this is *not* an approach the committee should or can fairly take.

---

[17] *Compare, e.g., Completed and Corrected Response to Stipulations Proposed by House* (June 1, 1989).

[18] Established practice in case of impeachment has in any event allowed respondent some interval *after* submission of a witness list by the House before response is requested.

CONCLUSION

The Impeachment Trial Committee should adopt the schedule requested in this motion. The cumulative disparity in information and documents created by the procedures employed by his accusers has become clear, and even the significant relief afforded by the discovery authorized by this committee has not been completely realized. The disparity in resources has been apparent from the outset. The committee is now fully aware of the time and resources that are necessary to prepare this case for trial and of the time and resources available to respondent. It is the committee that decided that respondent must continue his effort without adequate funds. The committee must recognize the present reality and compensate respondent for the handicaps that resulted from that decision with the only remaining currency available -- time to do the job with the resources available. The relief requested here is modest and is mandated by considerations of practical necessity. Respondent submits that it should be granted.

Respectfully submitted,

Terence J Anderson

Terence J. Anderson
Principal counsel to
United States District Judge Alcee L. Hastings

June 19, 1989

XXXIII. FINAL PRETRIAL STATEMENT

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

FINAL PRETRIAL STATEMENT OF THE HOUSE OF REPRESENTATIVES

Pursuant to the First, Second and Fifth Orders of the Impeachment Trial Committee, the House of Representatives hereby submits its Final Pretrial Statement in the above-captioned matter.

I. Statement of the Case

This case involves repeated acts of misconduct by Judge Alcee L. Hastings, United States District Judge for the Southern District of Florida. Based on its investigation, the House of Representatives has charged Judge Hastings with seventeen Articles of Impeachment. Each article rests upon misconduct that warrants removal from the Federal bench.

Article I charges Judge Hastings with knowingly participating in a conspiracy to obtain a bribe from men who were criminal defendants in a case pending before him. Judge Hastings' cohort in the conspiracy was William Borders, a prominent Washington, D.C. attorney who served time in prison for his participation in the scheme. Judge Hastings and William Borders set up a deal in which for $150,000 the judge would reduce to probation the three year prison sentences he had previously imposed on Thomas and Frank Romano.

Unbeknownst to Judge Hastings and William Borders, the Government had learned, through a confidential informant, of the bribery plan. After corroborating the evidence provided by the confidential informant, the Government initiated an undercover operation in which a former FBI agent impersonated one of the criminal defendants, Frank Romano. William Borders approached the undercover operative, and the bribery deal was struck.

Judge Hastings' participation in the scheme is established by numerous actions on his part beginning as early as May of 1981 and continuing through October 9, 1981, the day of William Borders' arrest. Two ready examples of Judge Hastings' participation are the actions he took after William Borders made certain promises to the undercover operative designed to prove that Judge Hastings was "on board." First, William Borders promised that the judge would appear at a restaurant -- which the undercover agent designated -- on a particular day and at a

particular time. Judge Hastings appeared as promised. Second, William Borders and the undercover agent agreed that after the agent made a payment on the bribe, the judge would issue a court order returning a substantial amount of Romano property, which five months earlier the judge had ordered forfeited. A $25,000 down payment was made. Judge Hastings issued the promised order shortly thereafter.

In addition, a web of events -- including telephone calls between Judge Hastings and William Borders and their travel plans -- will demonstrate contact between Judge Hastings and Mr. Borders at times which correlate with key events in the Romano case, a pattern which does not occur on other occasions. And at a critical point in the Romano case, a coded conversation between Judge Hastings and William Borders was recorded.

Further evidence to be presented concerns Judge Hastings' flight from Washington, D.C. after learning of William Borders' arrest. The circumstances of that hurried departure belie Judge Hastings' innocence. Within two hours of the arrest, Judge Hastings was told that Mr. Borders had been arrested, that the arrest had to do with a charge of corruption in Judge Hastings' courtroom, and that the FBI desired to interview the judge that afternoon. Despite the fact that he was given the names and telephone number of the FBI agents to contact, Judge Hastings made no attempt to reach them. Instead, he immediately left for Florida. Rather than going to National Airport, which had a flight available and was only four miles from his hotel, Judge Hastings took a $50 cab ride to Baltimore-Washington-International AIrport. And, instead of flying to Miami, where his car was parked, he deplaned at Ft. Lauderdale, an intermediate stop, and rented a car. The FBI eventually found Judge Hastings at his girlfriend's home late that evening.

Articles II through XV of the Articles of Impeachment focus on Judge Hastings' continued misconduct at the criminal trial in which he was charged with participating in the bribery conspiracy. Each of these articles specifies a separate instance in which the judge knowingly testified falsely under oath when he took the stand in his own defense. In each instance, Judge Hastings sought to mislead the trier of fact about his participation in the scheme with William Borders. His strategy was successful, for the ju[illegible]as acquitted in the criminal case. The evidence, however, convincingly establishes that Judge Hastings consistently and repeatedly lied under oath.

Articles II through XV are based upon the statements Judge Hastings made under oath in his attempt to explain away the incriminating evidence. For example, Article V charges that Judge Hastings lied under oath when he testified that the reason he appeared at the restaurant designated by the undercover agent was that Mr. Borders had asked him to meet there for dinner. Yet

the evidence clearly establishes that on the designated night Mr. Borders was in Las Vegas for a championship fight, a trip that had been long planned. Moreover, Judge Hastings invited a date to the dinner, made a reservation for only two persons and did not object when two place settings were removed after he and his date were seated at a table for four.

This is only one example of a false statement made under oath by Judge Hastings. Each and every one of the fourteen instances of false testimony charged in the Articles of Impeachment justifies Judge Hastings' removal from the Federal bench.

Article XVI of the Articles of Impeachment charges misconduct wholly independent of the bribery scheme. Two years after his trial on the bribery conspiracy, Judge Hastings divulged confidential information obtained through an authorized Government wiretap. The FBI had initiated an undercover investigation into union corruption at the Miami, Florida docks, which in turn led to an investigation of corrupt zoning practices in Hialeah, Florida. In furtherance of its investigation, the Government had applied to the Court for a wiretap. Judge Hastings had granted the application and had received weekly progress reports that set forth the information of criminal activity obtained by the Government.

Although Judge Hastings had placed under seal the wiretap application and the progress reports, thereby rendering the information confidential, he nonetheless disclosed a critical fact contained in those documents to Dade County Mayor Steve Clark. Judge Hastings warned Mayor Clark to stay away from one of the targets of both FBI investigations, indicating that the target was "hot" and was using the Mayor's name in Hialeah. This disclosure of confidential information undermined both FBI undercover investigations. Judge Hastings' disclosure not only violated his own court order, it also thwarted two important investigations into public corruption and placed FBI undercover agents at risk.

In the final Article of Impeachment, Article XVII, the House of Representatives charges that the totality of Judge Hastings' egregious misconduct warrants his removal from the Federal bench. That misconduct -- Judge Hastings' participation in the bribery deal, his repeated false statements under oath, his fabrication of documentary evidence at his criminal trial, and his divulgence of critical wiretap information -- has undermined the impartiality and integrity of the Federal Judiciary and betrayed the trust of the American people. Judge Hastings' actions, taken separately, justify removal from office. Taken together, the misdeeds unquestionably bring disrepute on the Federal courts and the administration of justice, warranting his removal from the bench.

II. Witnesses

The House of Representatives presently intends to call the following witnesses, in the order listed, in its direct presentation of the case against Judge Alcee L. Hastings.

Martha Rogers. Arent, Fox, Kinter, Plotkin, & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036

> Ms. Rogers was the Assistant United States Attorney in Miami, Florida to whom the confidential informant, Mr. William Dredge, first revealed his information concerning the bribery plan of Judge Hastings and William Borders. Ms. Rogers was actively involved in the initial investigation of the conspiracy and will testify about her role in that investigation.
>
> Anticipated length of direct testimony -- 30 minutes

James Deichert. Organized Crime Strike Force, 2002 U.S. Courthouse, 75 Spring Street S.W., Atlanta, GA 30303

> Mr. Deichert was the Department of Justice Strike Force attorney who prosecuted United States v. Romano. He will testify as to events in that case, including post-trial motions and orders.
>
> Anticipate length of direct testimony -- one hour

William Dredge. c/o Roger Spaeder, Esq., Zuckerman, Spaeder, Goldstein, Taylor & Kolker, 1201 Conn. Ave., 12th floor, Washington, D.C. 20038

> Mr. Dredge was the confidential informant who disclosed to the Government information about Judge Hastings' and William Borders' bribery schemes. Mr. Dredge will testify regarding his contacts with William Borders, the information he learned regarding the bribery schemes, and his agreement to introduce William Borders to the undercover operative who impersonated Frank Romano.
>
> Anticipated length of direct testimony -- two hours

Neal Sonnett. 200 S.E. 1st Street, Suite 500, Miami, FL 33131

> Mr. Sonnett represented Thomas and Frank Romano in post-trial proceedings before Judge Hastings. The House Managers have requested the admission, in lieu of live testimony, of

those portions of his prior testimony before the Investigating Committee of the Eleventh Circuit (hereinafter "IC" testimony) which relate to Mr. Sonnett's knowledge of contacts the Romanos received from Philip Moscato, on behalf of a Washington "bigshot," who claimed to have connections with the Romanos' judge.

Anticipated length of direct testimony if prior testimony not accepted -- 20 minutes

William Murphy. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Murphy was the FBI agent in charge of the Government's investigation into the bribery conspiracy. He will testify about the investigation, including the corroboration of the information provided by Mr. Dredge, the development of the undercover operation, the execution of the undercover operation, the conduct of Judge Hastings and William Borders during the course of the investigation, and the arrest of William Borders.

Anticipated length of direct testimony -- three hours

Airline Specialists.

The House of Representatives has requested that the Impeachment Trial Committee accept the IC testimony of three airline specialists. Those specialists are Richard Lowe, Willie James Washington and Laverne Boone.

Mr. Lowe was a supervisor of ticket control and custodian of records for Eastern Airlines. His testimony concerned information contained in Eastern's records for flights for Judge Hastings on or about June 17-18, 1981, July 17-20, 1981, September 11-14, 1981, and October 9, 1981; and for William Borders for flights on or about July 21-22, 1981, and September 11, 1981. Mr. Lowe also testified as to seat availability on Eastern flight 197 on October 9, 1981.

Mr. Washington is a reservation specialist working for Eastern Airlines, who is familiar with that airline's computer reservation record system. His testimony concerned information contained in Eastern's records for William Borders for flights on September 12 and 13, 1981, and for Judge Hastings for flights between September 10, 1981 and September 14, 1981. In addition, Mr. Washington explained the meaning of symbols and other notations in the flight reservation histories for the above described flights.

Ms. Boone is Mr. Lowe's successor at Eastern Airlines. She testified as to airline records reflecting the flight plans of William Borders on May 5, 1981, July 9-10, 1981, and September 12, 1981; William Dredge on May 28-29, 1981; and Judge Hastings on May 5-10, 1981, June 17-18, 1981, July 7, 1981, July 18-22, 1981, and September 10-14, 1981.

Anticipated length of direct testimony if prior testimony not accepted-- 90 minutes

David Thomas. 1130 Hemlock Circle, Fort Pierce, FL 34950

Mr. Thomas is William Borders' cousin, and an organizer of a family reunion held in Ft. Pierce from September 11 - 13, 1981. He will testify as to when the reunion was planned, and Mr. Borders' arrival and attendance at the reunion.

Anticipated length of direct testimony -- 20 minutes

Donna Myrill Mendez. Queens County Courthouse, 125-01 Queens, Blvd., Kew Gardens, NY 11415

Ms. Mendez was a friend and former law clerk of Jesse McCrary, a friend of Judge Hastings and William Borders. She was present in Judge Hastings' room at the Sheraton Hotel in Washington, D.C. on September 12, 1981, and will testify as to the arrival of Mr. Borders.

Anticipated length of direct testimony -- 30 minutes

Pearl Dabreau Mapp. 433 Elm Street, N.W., Washington, D.C. 20001

Ms. Mapp was a social acquaintance of Judge Hastings. She was present in Judge Hastings' room at the Sheraton Hotel in Washington, D.C. on September 12, 1981, and will testify as to the arrival of Mr. Borders.

Anticipated length of direct testimony -- 30 minutes

Essie Thompson. 1101 Riflecrest Avenue, Valrico, FL 33594

Ms. Thompson was a social acquaintance of Judge Hastings in 1981. She accompanied him to the Fountainebleau Hotel on September 16, 1981. She will testify about her conversations with Judge Hastings on September 15 and 16, the making of arrangements for their dinner date, and about the events of the evening of September 16, 1981.

Anticipated length of direct testimony -- 45 minutes

Madeline Petty. 5120 Third Street, N.W., Washington, D.C. 20011

The House Managers have requested that Ms. Petty's prior testimony be accepted into evidence. Ms. Petty was a social acquaintance of Mr. William Borders in 1981. Her testimony relates to the planning of a trip by her and Mr. Borders to Las Vegas for a championship boxing match on September 16, 1981, and the events surrounding that trip. In addition, Ms. Petty would testify about several calls made from Judge Hastings' residence to her home during the time of the alleged conspiracy in 1981.

Anticipated length of direct testimony if prior testimony not accepted -- 45 minutes

Jeffrey Miller. Miller & Beilly, 500 E. Broward Blvd, #1900, Fort Lauderdale, FL 33394

Mr. Miller was the law clerk working for Judge Hastings in 1981 who was assigned to United States v. Romano. He will testify as to his responsibilities with respect to that case and, in particular, the circumstances surrounding the preparation of the October 6, 1981 forfeiture order.

Anticipated length of direct testimony -- 45 minutes

Daniel Simons. London, England

Mr. Simons was a law student working in Judge Hastings' chambers in October, 1981. Because of his unavailability for trial, the House Managers have requested the admission of Mr. Simons' prior testimony before the grand jury. That testimony relates to Mr. Simons' knowledge of circumstances relating to the preparation of the October 6, 1981 order in United States v. Romano. The House Managers have also requested the admission of his prior testimony before the IC which relates to his knowledge of the absence of *ex parte* communications with William Borders.

Anticipated length of direct testimony -- unavailable for trial

Roger Shuy. 2032 48th Street, N.W., Washington, D.C. 20007

Dr. Shuy is a professor of linguistics at Georgetown University who specializes in conversation analysis. Dr.

Shuy is offered as an expert witness and his curriculum vitae is attached hereto as Attachment A. In summary, Dr. Shuy has been a professor of linguistics at Georgetown University for 19 years, has published numerous articles on conversation analysis and has testified as an expert witness in both federal and state courts throughout the country. Dr. Shuy has previously provided testimony before the Senate on conversation analysis; specifically, in the expulsion proceeding of ex-Senator Harrison Williams.

Dr. Shuy will testify about the October 5, 1981 telephone conversation between Judge Hastings and William Borders. He will testify regarding his opinion as to whether or not that conversation is in code, and the analysis he used in reaching his opinion.

Anticipated length of direct testimony -- one hour

Hemphill Pride. 3025 Forrest Drive, Columbia, SC 29204

Mr. Pride was a close friend of Judge Hastings in 1981, and he also knew William Borders very well. Mr. Pride will testify regarding his relationship with Judge Hastings and William Borders, the events of October 9, 1981, matters pertaining to Mr. Pride's reinstatement to the South Carolina Bar, his contacts with Judge Hastings, William Borders and the Government following Judge Hastings' indictment, and his access to particular phones in Columbia, South Carolina.

Anticipated length of direct testimony -- two hours

Dale Bird. Federal Bureau of Investigation, Washington, D.C. Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Bird is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Bird will testify regarding the events that took place on October 9, 1981.

Anticipated length of direct testimony -- 45 minutes

Wendy Loucks. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Ms. Loucks is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Loucks will testify regarding the interview conducted of

Patricia Williams on October 9, 1981.

Anticipated length of direct testimony -- 20 minutes

John Simmons. Federal Bureau of Investigation, Atlanta Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Simmons is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Simmons will testify regarding the interviews conducted of Judge Hastings' staff on October 9, 1981; the Government's attempt to locate Respondent on October 9, 1981; and the interview he conducted of Judge Hastings that evening.

Anticipated length of direct testimony -- 30 minutes

Albert Blocker. L'Enfant Plaza Hotel, Washington, D.C.

Mr. Blocker is the comptroller at the L'Enfant Plaza Hotel, in charge of all billing records at the hotel. He will testify as to records relating to Judge Hastings' stay at that hotel on October 9, 1981. He will also testify as to the hotel's record keeping systems with respect to long distance telephone calls by hotel guests.

Anticipated length of direct testimony -- 30 minutes

Senora Avery. AT&T, Room 4C, 3201 Germantown Road, Fairfax, VA 22030

Ms. Avery is an employee at AT&T experienced in the Hotel Billing Information System (HOBIS). She will testify as to that system and in particular, the HOBIS records for the L'Enfant Plaza Hotel for October 9, 1981.

Anticipated length of direct testimony -- 30 minutes

Antonio Cantu. U.S. Secret Service, 1310 L St. N.W., Room 800, Washington, D.C. 20005

Mr. Cantu is an expert in the field of ink writing analysis, formerly with the Bureau of Alcohol, Tobacco & Firearms, and now with the Secret Service. Mr. Cantu's qualifications as an expert in this field are set forth in the curriculum vitae attached hereto as Attachment B.

Mr. Cantu authored a forensic report pertaining to the ink analysis of the handwritten letters disclosed to the prosecution in December, 1982 in United States v. Hastings. He will testify as to the contents of that report and related matters.

Anticipated length of direct testimony -- 30 minutes

David Attenburger. Federal Bureau of Investigation, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Attenburger is a forensic expert in the field of document analysis, and a special agent of the FBI. His qualifications as an expert in this field are set forth in the curriculum vitae attached hereto as Attachment C.

Mr. Attenburger was the author of a forensic report pertaining to the impression analysis of the handwritten letters disclosed to the prosecution in December, 1982 in United States v. Hastings. He will testify as to the contents of that report and related matters.

Anticipated length of direct testimony -- 30 minutes

Robert I. Richter. Room JM-640, 500 Indiana Avenue, N.W., Washington, D.C. 20001

Judge Richter was the senior attorney from the Public Integrity Section of the Department of Justice assigned to the investigation and prosecution of Judge Hastings and William Borders. He will testify about the post indictment investigation, the discovery proceedings in United States v. Hastings, and Judge Hastings' criminal trial testimony.

Anticipated length of direct testimony -- one hour

Joel Hirschhorn. 2766 Douglas Road, Miami, FL 33133

Mr. Hirschhorn represented Judge Hastings in his criminal proceedings from shortly after his indictment until March 2, 1982. The House Managers have requested that Mr. Hirschhorn's IC testimony with respect to matters relating to discovery in that case be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Carolyn McIver. 2913 Larkhall Road, Columbia, SC 29223

Ms. McIver was an acquaintance of Judge Hastings. She will testify regarding Hemphill Pride's lack of access to her business telephone and Judge Hastings' trip to Columbia, South Carolina after his indictment.

The House Managers have requested that Ms. McIver's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 30 minutes

Andrew Chisholm. 330 Bradbury Drive, Columbia, SC 29223

Mr. Chisholm was an acquaintance of William Borders. He will testify regarding Hemphill Pride's lack of access to his business telephone.

The House Managers have requested that Mr. Chisholm's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Eleanor Golar-Williams. 1215 McDuffie Avenue, Columbia, SC 29204

Mrs. Golar-Williams is the ex-mother-in-law of Patricia Williams. She will testify regarding her contacts with Ms. Williams and Hemphill Pride's lack of access to her home telephone.

The House Managers have requested that Ms. McIver's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Roberto Martinez. Zuckerman, Spaeder, Taylor & Evans, Suite 1100, 2100 Ponce de Leon, Coral Gables, FL 33134

Mr. Martinez was the Assistant United States Attorney in charge of the investigation which was the subject of the wiretap supervised by Judge Hastings. He applied for authorization for the Title III wiretap and presented subsequent weekly progress reports to the judge. Mr. Martinez will testify about the underlying investigations, the information which he provided to Judge Hastings concerning those investigations, Judge Hastings' comments with regard to certain information obtained during the investigations, and the disclosure of confidential information by Judge Hastings which required the termination of major aspects of the investigations.

Anticipated length of direct testimony -- two hours

Geoffrey Santini. Federal Bureau of Investigation, New Orleans Region ,10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Santini is a Special Agent of the FBI, who participated in the investigation which was the subject of the wiretap supervised by Judge Hastings. Agent Santini will testify about the FBI undercover operations, the presentation of the application for an extension of the wiretap, Judge Hastings' comments to him at that time, and the investigation of the disclosure of the confidential information.

Anticipated length of direct testimony -- 45 minutes

Steven Clark. Office of the Mayor, 111 N.W. 1st Street, Suite 230, Miami, FL 33128

Steven Clark is the Mayor of Dade County, Florida. He will testify regarding Judge Hastings' disclosure to him of information at the annual conference of the Metro-Miami Action Plan held on September 6, 1985.

Anticipated length of direct testimony -- one hour

Monsignor Bryan O. Walsh. Catholic Community Services, Central Office, 9401 Biscayne Blvd., Miami Shores, FL 33138-2998

Monsignor Walsh is the President of Catholic Community Services in Miami, Florida. He attended the annual conference of the Metro-Miami Action Plan on September 6, 1985. Monsignor Walsh will testify about events that occurred that morning.

Anticipated length of direct testimony -- 20 minutes

Christopher Mazzella. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

In 1985 and 1986, Mr. Mazzella was an FBI supervisory special agent in the Miami field office of the FBI, supervising investigations of public corruption and labor racketeering. He will testify as to his participation in the undercover operation which was the subject of the process.[3] The verdict of a criminal jury is not determinative, for otherwise it would undermine the sole power of the Senate to try all impeachments. In analogous situations, the Senate has recognized this principle and refused to defer to a decision of the courts.[4] Accordingly, the issue of what evidence was presented to the jury is wholly irrelevant.

V. Conduct of Evidentiary Proceedings

The House of Representatives intends to allocate approximately 26 hours to the presentation of its case through direct testimony. The House anticipates no problems in the presentation of their direct case.

VI. Legal Principles

Impeachment is not a criminal proceeding. The House of Representatives recognized this precept when it conducted its impeachment investigation of Judge Hastings. The Senate, in turn, endorsed this fundamental premise when it rejected, by an overwhelming vote, Judge Hastings' Motion to Dismiss based on the doctrine of double jeopardy.

Likewise, criminal conduct is not a prerequisite for impeachment. In the American experience, in numerous instances civil officials have been impeached and removed from office based upon Articles of Impeachment which did not charge a violation of the criminal law.

In this case, the House of Representatives has charged Judge Hastings with 17 articles, resting upon separate and distinct misdeeds each of which warrants removal from public office. Although these various acts of misconduct may also constitute criminal violations, the House has not charged Judge Hastings with any criminal offense. Rather, the House determined that in each instance, Judge Hastings conducted himself in a manner that is fundamentally inconsistent with his position of public trust.

Because impeachment is not a criminal proceeding and criminal misconduct is not charged, the formal elements of proof of criminal offenses do not apply. For example, in Articles II through XV, the House charges Judge Hastings with knowingly wiretap supervised by Judge Hastings. He will also testify about his supervision of the investigation of the disclosure of the confidential information, and the effect of that disclosure upon the undercover operations.

---

[3] See, for example, Response of the House of Representatives to Respondent's Motion to Dismiss Articles I Through XV, reprinted in S. Doc. 101-4, 101st Congress, 1st Sess., at 107 et. seq.

[4] Ibid. at 128-131.

Anticipated length of direct testimony -- two hours

III. Exhibits

A numbered index of exhibits is attached hereto as Attachment D. The index includes citations to United States v. Hastings and the proceedings before the Eleventh Circuit Investigating Committee for each exhibit which was previously introduced.[1] Documents attached to the House submissions on prior testimony are included in the index. Copies of the exhibits listed in Attachment D will be provided, in exhibit notebooks, to Respondent and to the Committee on June 22, 1989.

IV. Prior Testimony

In its filings dated June 14 and June 15, 1989, the House of Representatives requested that the prior testimony of certain witnesses be admitted into evidence at the outset of the trial and that the Committee make provisional rulings on the admissibility of the prior testimony of certain other witnesses if, because of time constraints, the House Managers were to offer their prior testimony during the course of the trial in lieu of live testimony. Those requests are indicated in the above list of witnesses.

With respect to the prior testimony designated by Judge Hastings, the House Managers have no objection to the admission of the prior testimony of Alvoyd Merritt. However, the House objects to the admission of the entire transcript of the trial proceedings in United States v. Hastings, "not . . . offered to prove the truth of the matter [by Judge Hastings] . . . [but] to prove that accusations made in Articles I through XV were fully presented at that trial and were committed to the jury that acquitted respondent."[2]

As the House has repeatedly stressed, impeachment proceedings are separate and independent from the judicial testifying falsely under oath fourteen different times at his criminal trial. The House did not allege, nor even mention in the Articles of Impeachment, the crime of perjury. Therefore, the Senate is not bound by the technical elements of proof of this crime, such as materiality.

---

[1] Citation is made to the hearings before the Subcommittee on Criminal Justice of the House Committee on the Judiciary for exhibits which were introduced only during those proceedings.

[2] Statement on Behalf of Respondent Concerning Use of Prior Testimony, June 14, 1989, at 1.

Likewise, although Article XVI alleges conduct that is prosecutable under federal criminal law, the Senate is not and should not be bound by the elements of proof necessary to establish those criminal violations. Thus, for example, whether or not the Senate concludes that the Respondent intended to obstruct a "pending judicial proceeding," as is required in a criminal prosecution for obstruction of justice, the Senate may conclude that the Respondent's conduct constitutes a "high crime or misdemeanor" within the meaning of the Constitution.[5]

Because impeachment is not a criminal proceeding, the criminal standard of proof, "beyond a reasonable doubt," does not necessarily apply. Rather, "the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment."[6]

---

[5] All the conduct charged in the Articles of Impeachment does, in fact, violate criminal law standards. For example, the misconduct charged in Article XVI constitutes criminal contempt, in violation of 18 U.S.C. sec. 401. Section 2518(8)(c) of Title III of the federal wiretap law provides that "Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge." The House will prove that the Respondent was aware of a clear and definite court order (his own sealing order) which he willfully disobeyed, thereby satisfying the elements of that criminal law offense.

In addition, the alleged conduct constitutes obstruction of justice in violation of 18 U.S.C. sec. 1503. The elements of that offense are that the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice. The courts have held that the intent required to establish this offense is merely that "the defendant should have reasonably foreseen the natural and probably consequence of the success of his scheme. . . ." United States v. Silverman, 745 F.2d 1386, 1393 (11th Cir. 1984), United States v. Buffalano, 720 F.2d 50 (2d Cir. 1984); United States v. Neiswender, 590 F.2d 1269 (4th Cir. 1978), cert. denied, 441 U.S. 963 (1979). Thus, the element of acting "corruptly" does not require that the violator acted for evil or pecuniary reasons. Here, the proof to be offered by the House will satisfy these elements.

[6] This was the ruling of the Chair (Senator Mathias presiding) when the Senate defeated the motion by Judge Harry Claiborne during his impeachment trial to apply the criminal

With these legal principles in mind, the House Managers turn to the individual Articles of Impeachment.

Article I. The first article charges that Judge Hastings and William Borders entered into a corrupt conspiracy. The essence of a conspiracy is a partnership, a combination of two or more persons who join together to accomplish an illicit purpose. The House charges that Judge Hastings was a knowing participant in such a partnership with William Borders, and the illicit purpose of that partnership was to obtain a bribe from Thomas and Frank Romano.

By its very nature, a conspiracy is characterized by secrecy. Therefore, the existence of a conspiracy may be inferred from circumstances and the conduct of the parties involved. When determining whether a conspiracy existed, it is appropriate to consider the actions and statements of the alleged participants as proof of the partnership and its illicit purpose.

Articles II through XV. These articles charge Judge Hastings with knowingly testifying falsely under oath in an effort to mislead the trier of fact at his criminal trial. The House will prove that in fourteen separate instances, Judge Hastings violated his oath to tell the truth, and that he did so in order to obtain an acquittal. Few actions are more subversive of the legal process that lying on the stand. A judge who has sought to mislead persons engaged in any aspect of the legal process is unfit to remain on the bench.

In his Answer to the Articles of Impeachment, Judge Hastings states that with respect to four of these articles, Articles X through XIII, his testimony was false, but that he believed it was true at the time he made the statements.[7] The House will establish, however that Judge Hastings knowingly testified falsely with respect to these and the other statements alleged in Articles II through XV. Such conduct is inconsistent with holding the office of United States District Judge. The foundation of the judicial system is that persons testifying under oath will tell the truth, the whole truth, and nothing but the truth. If a judge testifies falsely, he sets a standard for candor in his own courtroom which cannot be condoned.

Article XVI. In this article, the House has charged Judge Hastings with leaking confidential information which he learned while acting as a supervisory judge of an authorized Government wiretap. The House will prove that there were court orders,

---

standard of proof. S. Doc. No. 48, 99th Cong., 2d Sess. 108, 148.

[7] See Answer to Articles of Impeachment at 8.

entered by Judge Hastings himself, placing under seal the information contained in the Government's application for the wiretap and the subsequent progress reports. Judge Hastings had knowledge of what was in those documents, and those documents were the sole source of his information. By disclosing that information to Mayor Clark, he sought to place himself above the law, a position incompatible with the duty of all citizens.

Article XVII. The final article of impeachment rests upon the totality of Judge Hastings' misconduct. Article XVII calls upon the Senate to look at the pattern of his misbehavior, beginning with the bribery conspiracy in 1981, continuing with false testimony and fabricated evidence submitted at trial in 1983, and culminating in his disclosure of wiretap information in 1985. This article charges that taken as a whole, the pattern of misconduct is such that Judge Hastings is unfit to remain in office.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 21, 1989

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

June 21, 1989

The Honorable Jeff Bingaman
Chairman
The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

Pursuant to the First, Second and Fifth Orders of the Senate Impeachment Trial Committee, enclosed is the Final Pretrial Statement of the House of Representatives. Respondent has taken the position that he does not intend to file his Pretrial Statement. (*See*, Respondent's Motion for Reconsideration and Rescheduling, dated June 19, 1989.) Accordingly, the House Managers respectfully request that in the interests of fairness, the enclosed submission be accepted for *in camera* review only, with distribution only to the Committee members and the Committee staff, and that it remain confidential until such time as the Respondent files his pretrial statement.

Sincerely,

John Bryant per AIB
John Bryant
House Manager

cc: Terence Anderson (cover letter only)
    Michael Davidson

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

June 22, 1989

RECEIVED JUN 2 2 1989

The Honorable Jeff Bingaman
Chairman
The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

Pursuant to the Fifth Order of the Senate Impeachment Trial Committee, the House Managers hereby file one copy of the exhibits the House intends to introduce in its direct presentation of the case against Judge Alcee L. Hastings. Respondent has taken the position that he does not intend to file his exhibits (See, Respondent's Motion for Reconsideration and Rescheduling, dated June 19, 1989.) Accordingly, the House Managers respectfully request that in the interest of fairness, the enclosed submission be accepted for in camera review only, with access limited to the Committee members and the Committee staff, and that it remain confidential until such time as Respondent files his pretrial statement.

Sincerely,

John Bryant per LEP

John Bryant
House Manager

cc: Terence Anderson (cover letter only)
Michael Davidson

PRETRIAL EXAMINATIONS

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
F. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

MEMORANDUM FOR THE RECORD

Thursday, June 15, 1989

Upon due notice, the committee conducted, in closed session, a pretrial examination of Gerald E. McDowell at 10:40 a.m., in Room SD-212, Dirksen Senate Office Building, Vice Chairman Specter presiding. Both parties were represented by counsel.

Isabel T. McVeigh
Isabel T. McVeigh
Journal Clerk

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA
ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Thursday, June 15, 1989

Upon due notice, the committee conducted, in closed session, a pretrial examination of Gerald E. McDowell at 10:40 a.m., in Room SD-212, Dirksen Senate Office Building, Vice Chairman Specter presiding. Both parties were represented by counsel.

Isabel T. McVeigh
Isabel T. McVeigh
Journal Clerk

XXXVI. FINAL PRETRIAL CONFERENCE WITH THE PARTIES

IMPEACHMENT OF JUDGE ALCEE L. HASTINGS

THURSDAY, JUNE 22, 1989

U.S. SENATE,
IMPEACHMENT TRIAL COMMITTEE,
Washington, DC.

The committee met, in conference with counsel, pursuant to notice, at 3:38 p.m., in room EF-100, Capitol, Honorable Jeff Bingaman, chairman of the committee, presiding.

Present: Senators Bingaman (chairman) and Specter (vice chairman); Representatives John Bryant and George W. Gekas, Mike Synar, House managers; Michael Davidson, Senate Legal Counsel; Elaine W. Stone, Mark Klugheit, Bruce McBarnette, counsel to the committee; Alan I. Baron, House Special Counsel; and Terence J. Anderson, counsel for Judge Hastings.

Also present: Anthony L. Harvey, administrator; P. Casey McGannon, Staff Assistant; and Isabel McVeigh, Staff Assistant.

The CHAIRMAN. Why don't we begin.

I am informed that Senator Specter has been detained at another meeting and will be here as soon as he can, but let's go ahead.

The idea of the meeting today, as I understand it, is to have a final discussion prior to the trial date that was set of July 10, at which time counsel for the House or the House managers and counsel for Judge Hastings could raise any issues that they felt the committee needed to consider and we could hear argument on any item that needed the committee's attention before we actually proceeded.

I guess the first item I had on my list that we probably needed to get discussion on and argument both from the House managers and from Judge Hastings' counsel relates to the motion for reconsideration and rescheduling that was filed yesterday.

I think the most orderly way to proceed on that would be to have Mr. Anderson, you and Judge Hastings, however you handle this, if you would take four or five minutes and describe your argument there and then we will call on the House to respond.

Mr. ANDERSON. Thank you, Senator.

Let me start. The House, in an early conference, demonstrated to me the utility sometimes of having one-page summaries, so I have prepared a further piece which I think sets this in context in terms of the relative amount of time that Judge Nixon has been accorded by the Congress and the relative distinction between the procedures that leave him at this point with substantial discovery well in hand, in fact, well in hand before the impeachment began.

The CHAIRMAN. Let me just indicate for the record that Mr. Anderson has just handed to me a document, a one-page document entitled, "Why Has Convicted Judge Walter L. Nixon Been Accorded Greater Deference by Congress Than Acquitted Judge Alcee L. Hastings," and we will enter that in the record.

[The document referred to follows:]

WHY HAS CONVICTED JUDGE WALTER L. NIXON BEEN ACCORDED GREATER DEFERENCE BY CONGRESS THAN ACQUITTED JUDGE ALCEE L. HASTINGS?

Convicted Judge Walter L. Nixon and his counsel have been allowed fifteen (15) months to prepare for trial on the three (3) articles adopted by the House. The House began hearings in that inquiry on June 9, 1988, but did not adopt those articles until eleven months later, on May 10, 1989. Moreover, the procedures observed by the House assured that Judge Nixon had had the opportunity to confront the witnesses against him and to obtain documents for his defense well before he was impeached. The Impeachment Trial Committee appointed in that case had decided that pretrial statments should be filed on July 31, 1989, and that Judge Nixon should have an additional month to prepare before the evidentiary hearings began. As a result, the convicted Judge Nixon and his counsel have effectively been allowed more than six months *after* they obtained the necessary material to organize the available evidence, more than two months to prepare a pretrial statement that addressed the specific accusations made by the House, and a further month for final trial preparation. That is as it should be.

Under the present schedule, acquitted Judge Alcee L. Hastings will have been allowed less than fourteen (14) months to prepare for trial on the seventeen (17) articles adopted by the House. The House began its hearings on May 18, 1988, and adopted its seventeen articles less than three months later, on August 8, 1989. As a result of the procedures employed in that inquiry, Judge Hastings did *not* have an opportunity to confront the witnesses against him or to obtain documents necessary for his defense. His discovery is still not fully complete. The Impeachment trial Committee appointed in his case decided that pre-trial statements should be filed on June 21, 1989, and that the evidentiary hearings should begin less than three weeks thereafter, on July 10. Under this schedule, the acquitted Judge Hastings and his counsel would have been required to file his pretrial statement before discovery was complete and to begin evidentiary hearings less than three weeks thereafter. That is *not* as it should be.

Why has Congress shown greater deference and taken greater concern to protect the rights of convicted Judge Walter L. Nixon, Jr., than it has for those of acquitted Judge Alcee L. Hastings? Why is acquitted Judge Alcee L. Hastings being forced to trial on seventeen articles with less time for meaningful trial preparation than convicted Judge Walter L. Nixon, Jr. is being allowed to prepare for trial on three? These are questions Judge Hastings and his counsel would ask the Impeachment Trial Committee to consider and answer, if it can.

June 22, 1989

Mr. ANDERSON. Thank you, Senator.

I want to make the point as sincerely as I can, but let me start. The motion, at least with respect to this lawyer, is you run them about as fast as you can and he simply can't keep up with the pace you've set. I apoligize for that—no, I don't really apologize for that. I have done what can be done with the resources available to me.

The point, however, beyond that is, I gather Judge Nixon's lawyer described the proceedings in the Senate in our case as proceeding as a lanquid pace. However, if you look at the summary, the House in Judge Nixon's case conducted those proceedings, as it had by tradition, the witnesses who will be called in the Senate were in fact called, as I understand it, and examined in the House. They suspended the proceedings to permit Judge Nixon to litigate in the courts his post-judgment attack under 2255, in connection with he got a significant amount of discovery from the Justice Department, had an opportunity in those proceedings to examine Mr. Weingarten, the prosecutor in that case, and other witnesses. So, by the time the articles were voted, 11 months after the House began its hearings, Judge Nixon and his counsel had, in effect, assembled the record, not only such part as the House thought bore on its accusations, but also it had a chance to cross-examine, confront the witnesses against them make such submissions and develop the record.

You start at that point—and I think those hearings were completed sometime before, in fact, the articles were adopted. On May 18th, it comes before the Senate and Judge Nixon and his counsel have their tidy package of documents, depositions, things where they have done cross-examination, ready to go.

The Senate has, through its Impeachment Trial Committee, accorded them a circumstance where their pretrial statment would be due three months after discovery, in six months after, the three months effectively after discovery was completed, and even after the filing and pretrial statement, they will have a further month to refine their trial preparations. I think that is as it should be, Senator.

Our problem is that this is not a mere three accusations, this is 17 articles of impeachment on, in our view, 15 of them have been tried to a jury, so you have an acquitted judge, not a convicted judge, one of them is new and has never been tried, and then we have a catch-all, of which it shouldn't require the third article in Judge Nixon's, and the seventeenth in Judge Hastings', I take it does not require a great deal of additional evidence.

This is a more complex case. Effectively, although the time in the Senate has been generous, we haven't been able to use it until we began getting our discovery, although we certainly have worked hard on motions and other matters.

We are now in the position where discovery is almost, but not quite complete. Under the schedule established by the committee, we would have had to file and prepare our pretrial statement prior to the time the discovery was complete and be at trail three weeks later.

I don't mean to revisit, and I suppose we will with Mr. Davidson in court, the question on funds and resources, and I will not ask the Chair, as I have at other proceedings, to read the name of everyone in the room, but, frankly, we do not have the staff, the human stamina or the resources to meet the schedule you have set, and our paper I put today is simply to set that in context.

I realize that this is taking a long time in the Senate, but I trust the Senator and the Senate realizes that this entire case is unprecedented, both in its complexity and in the circumstances which you find an acquitted judge sitting before the Senate today. The decision to utilize a trial committee in a context of matters that have not, matter on which a judge has been acquitted and in one instance matters which have never been heard in any other forum.

Everything that happens in this case is unprecedented. Our motion is simply to plea to try and establish a procedure that brings us to as close a parity as we would likely be allowed to become before the pre-trial statements come in and gives us after that a chance to order ourselves so we may proceed.

I realize the committee has expressed its view that this case won't be completed by early August or the evidentiary hearings portions of it. That determination was made at a time I think before the committee had an opportunity to familarize itself with the overall complexity and the volume of documents and other matters in this case.

As a responsible lawyer, I could not announce ready for trial today and I could not file, in my view, a responsible pretrial statement, physically as well as professionally.

The CHAIRMAN. Okay. Let me call on the House managers to respond to the motion for reconsideration and rescheduling and give us their views.

Mr. BRYANT. Mr. Chairman, we vigorously oppose the motion for continuance, as the Senate has participated in pleadings in Federal court. This is the longest period of time for trial of the 20 impeachments and the actual trial of the impeachment articles in history. It is unfair, I think, to the people of Florida to continue to keep this matter in abeyance.

I think it is our very strong feeling and I am not sure my arguments today can add a great deal to what the committee already knows about the circumstances, and I will not burden you with a lengthy recitation of the recent history in this matter, but our view is that repeatedly in this case had the counsel for Judge Hastings or Judge Hastings devoted time to the actual preparation of the defense of this case, they would be ready, rather than devoting their time to filing a fifty-page statement attacking the process, which was the substitute we got in response to our stipulation the last time, or to filing spurious lawsuits in Federal court.

I would read to the chairman from the final page of the pleading filed by the counsel for the Senate in defense of the lawsuit that is presently pending in Federal court, filed by Mr. Anderson and Judge Hastings, which says: "However much Judge Hastings would prefer to delay the vote on the articles of impeachment, he has no constitutional grievance against the present schedule for trial of his impeachment."

We agree. We have been as accommodating as possible, far more accommodating than normally would be required. Our view is that the Senate has been accommodating as well, and we urge the Senate to stick with the present schedule, to require the filing of pretrial statements, the filing of a list of exhibits, that the respondent just as you have required of the House and th House has complied with, and proceed to trial on July 10th.

Judge HASTINGS. Senator, let me respond to Congressman Bryant.

The CHAIRMAN. Judge, go ahead.

Judge HASTINGS. I wish to dispel a myth that has been perpetrated rather frequently, and that is that we are doing things for the purpose of delay. Let me have it clearly understood that I don't gain anything by delay of these proceedings, whether or not I maintain the position that I am in or that I am removed, I gain nothing.

There are a considerable number of things that any lawyer—and let's look at it lawyer to lawyer in this room. With the exception of the young aides that are here, there are very few rookies in this room, and everybody in this room knows what Terence and Patricia and Robert and the other persons that have helped me have had to do in an effort to try to come on-board and meet the requirements that are being set forth, not only by the Senate but throughout these entire proceedings.

Now, with reference to what Congressman Bryant just said about the 50-page statement: I am sure the Congressperson would not have my lawyers not do everything that they could to protect my interest. Preparation for trial, he said, is what we should have been about, rather than doing those things, principal and legal, that we think are necessary and in my interest.

Now, as I speak to you and this group of people assembled, one of my lawyers is working on this witness list. There are witnesses that we would like to call that we don't even know where they are. So, you say why don't you know where they are. Because we haven't the resources to hire investigators to do the things that are necessary in order to bring those persons forward.

There are other methods of trial preparation. We have here two human beings in the final analysis who are trying to put together the necessary papers to be well-organized to go to trial.

The question that I put to you, Senator and to everybody, is what is the hurry, who else has anything to lose in these proceedings other than me, in the final analysis. And if I am not rushed, I literally have difficulty understanding—now, I understand political expediency, I understand the size and the complexity of the work of the Senate, and I have no need to all to try to impact on that in a way to be cute.

We are not prepared, it is just that simple. And when lawyers come before me and say that they are not prepared, I begin to ask them why. When they give me reasons, if those reasons are reasonable, I can't think of any proceeding that I have ever been in in my life where I have said or been told that if the person that is a lawyer is not prepared, that he or she is going to go forward in any way, and that is the position that we are in.

The reality is that we are carrying a heavy load and we have managed to keep paper in the air during this entire period of time in more fora than any individual in the history of this country has had to undergo, nobody, nobody has been in three fora with reference to an impeachment and tried to keep things going.

I commented to Terry yesterday, I added it up with my mom, 75 percent of our holidays have been spent working on matters pertaining to this particular case during the last five years. It may not be important to anybody, but somehow it always falls that if it is the House or if it is John Doar or if it is somebody else, our papers are always due on Memorial Day weekend and the Fourth of July weekend, whereas the other side is in a better position.

Those things have impacted on us, they have impacted severely. We are operating here in Washington, DC. That is not where our staff is. Everybody else is in DC, that is where their staff is. We run back and forth from here to Miami, and I'm not even going to lay on you the trip about no money. Please know that it takes money in order to do these things. Now, you are not going to give us money, so the only coin of the realm that you can afford us is time, and that is all we are asking.

When is this thing going to be wrapped up? It will be in your hands for an ultimate vote on your schedule sometime after Labor Day. A month, I thought that was reasonable. I was even pressing him to ask for it to be in the 102nd, so that we could be adequately prepared, but I thought that he was more than reasonable in his request. We are very sincere in that regard, and that is all I wish to say.

Thank you.

Mr. BRYANT. Mr. Chairman?

The CHAIRMAN. Let's have one more statement by the House managers and then we have a bunch of things on the agenda, so I don't want to stay on this all afternoon.

Mr. BRYANT. I don't wish to respond directly any further. I think our case has been made. I would just add one thing, and that is that this pattern or practice was characterized in respondent's response to these charges throughout all of the years that they have been pending against him at any stage of the proceeding, including here in the Congress.

I would also like to ask, for the record, and I think it would be beneficial for all concerned if we could ask Alan Baron, who is counsel both to the House managers in this matter and counsel to the House managers in the Nixon matter, to respond to the allegations made in the one-page summary with regard to the difference between the treatment of Judge Nixon and Judge Hastings, if he would respond briefly to that.

The CHAIRMAN. Mr. Baron, do you have a comment on that or a response to that document?

Mr. BARON. Yes, I do. I think there are several statements in here which in my judgment at least don't really accurately state the situation. First of all, the length of time between the time that articles were brought against Judge Nixon and the time that he is going to trial, articles were brought I believe in May 1989, and the trial is scheduled for the first week of September 1989, so you are talking three and a half months. There have already been 11 months since the articles were brought against Judge Hastings.

Second of all, the statement in here that Judge Nixon has had time, he had obtained the documents for his defense well before he was impeached—I think Mike Davidson will bear me out that we are now in the process of discovery, that we are filing motions literally I think tomorrow in Judge Nixon's case, and there will be debated back and fourth about what has to be produced and what doesn't have to be produced, and whether they will have to go to the Justice Department to get it, and whether the FBI is going to turn over documents.

There has not been a total turnover of documents months ago to Judge Nixon that Judge Hastings has been deprived of in his case. To the contrary, he got far more discovery than was given in Judge Nixon, and Judge Nixon has not yet obtained discovery in that case. That is the subject of motions right now.

The CHAIRMAN. Let me move on to another—we have got several things here we need to hear people out on. I would just suggest for the rest of this meeting today, let's proceed on the assumption that July 10 is the date.

The next item that I have down here is the House request—the House did file a pretrial statement yesterday, as our order had directed, as I understand it, that the pretrial statement be held *in* *camera* for review only by the committee members and its staff until such time as Judge Hastings files his pretrial statement.

I think what we need to do is first hear the House's point of view on that and then hear Judge Hastings' and Mr. Anderson's point of view on that single issue.

Mr. **Bryant**. Mr. Chairman, the Senate committee determined a method for proceeding, which we have rigorously adhered to throughout the proceedings here. We adhered to the Senate requirement with regard to filing of our pretrial statement, and today at 5:00 o'clock we will file as well our exhibits, which were required as of that time by the Senate order.

There is no proceedings in jurisprudence anywhere where one side is requried to lay out all of its case, its order in which to proceed, all its exhibits, while the oter side is not required to do the same thing. There is no proceeding in which you are required to give the other side the advantage of looking at the way in which you are going to proceed before they decide how they are going to proceed.

We simply ask for basic procedural fairness in this matter or an amendment of the order so that we might withdraw our offering of a pretrial statement and our exhibits and be able to proceed again.

We believe that it is abundantly clear that Judge Hastings should not be rewarded for refusing to follow the rules set down by the Senate. If the Senate is persuaded that you should change the rules, then we should be permitted to withdraw our pretrial statement and or exhibit list and start over under whatever new rules you decide.

The **Chairman**. So, you are essentially saying if the Senate were to grant additional time to Judge Hastings to file a pretrial statement, you should be able to withhold the filing of yours or withdraw yours and refile it at that same time, is that it?

Mr. **Bryant**. We simply would like to be able to play by the same rules which you impose on the respondent, or at the very least would request that you hold in confidence our presently filed statements, in order that they not be examined by the respondent until we have a chance to exchange our pleadings with him.

The **Chairman**. Mr. Anderson, did you have a point of view on this request?

Mr. **Anderson**. I certainly do, Senator.

First, as a matter of precedent, as I read the cases in prior impeachments, the House has invariably filed its witness list prior to the time the respondent is called upon to do so, so I don't think it is anything unusual.

There are times when I understand the House to have said that they have made full disclosure of their theory long ago, that Judge Hastings had it, the dignity of the proceedings; this is an impeachment. There are other times when I have a sense I am involved in a piece of litigation where, like large law firms and other lawyers sometimes do, any edge the other side might get is to be abhorred and, in all events, opposed.

Do I think we are entitled to their pretrial statement? Yes. Am I going to argue with you forever about the rules on that? No. Do I think it is more orderly if in fact the respondent prepared a pretrial statement, knowing case he is called to meet? Yes, it may avoid some duplication of witnesses, duplication of documents, yes, it will give us, I suppose, some additional time to think, with an awareness of how the House intends to proceed.

I did not understand the constitutional process of trying an impeachment to be an effort to see who had the clever attorneys and could slip out a better tactic at which point.

I think the respondent is entitled to understand at this point exactly how the House would like to proceed and to prepare his pretrial statement with that on the table.

The CHAIRMAN. Do I take it from your last statement that you would expect to file a pretrial statement if in fact you had the opportunity to see the House's pretrial statement?

Mr. ANDERSON. As far as we can get the job done, we will file a pretrial statement, Senator.

Let me emphasize—my daughter, with whom I was having dinner last night, was counting back what grade she was in when I began working for Judge Hastings. She counted back to seventh grade and she is now three years out of college. This is not something that is a sporting event for me which I hope to prolong forever. There are other things I too have and would enjoy doing.

Yes, we will prepare a pretrial statement as rapidly as we can get the job done and, yes, I think we ought to have the benefit of the House's pretrial statement and exhibits as we do that work, if the Senate seeks an orderly trial.

The CHAIRMAN. Let me ask the House managers—I agree with your general statement that we the committee issued an order directing that pretrial statements be filed simultaneously, with the thought that was a fair way to proceed.

In light of what has occurred, which is that you have met that deadline and Judge Hastings has not, how is the House prejudiced by us permitting Judge Hastings to see your proposed pretrial statement or your pretrial statement?

Mr. BRYANT. Mr. Chairman, at the outset, I would point out that one of the principal allegations in this impeachment matter is the allegation that the Judge manufactured evidence repeatedly in the trial of the case in Florida in which he obtained acquittal.

To hand him a pretrial statement that lays out all of our witnesses and the order in which we intend to offer them, a list of our exhibits and the exhibits themselves, is an open invitation to respondent or to the defendant, as the case may be, to find ways in which to weave a path around the presentation of that evidence.

The clear constitutional mandate is every proceeding is a defendant or a respondent be given a clear statement of the charges against him or her, so they might prepare a defense for those. Those charges are the articles of impeachment. Under no circumstances in any setting at all is one side's entire case strategy handed over to the other side. That would be the same thing as opening all of our files up to him.

The CHAIRMAN. But had Judge Hastings complied with the Committee's order, they would be receiving your pretrial statement today, just as you would be receiving theirs, so——

Mr. BRYANT. But they would have also been committing themselves to what their defense is going to be at the same time and unable to change the evidence or——

The **Chairman**. But in the orderly presentation of this case, the House will go first. I think we are all agreed that the House will have the burden of going forward with the articles of impeachment, Judge Hastings will then have an opportunity to present a defense, and it is a question of how much time they will have to prepare that defense.

Mr. **Bryant**. Mr. Chairman, we will, at the time that the pretrial statements are filed, be held to the contents of the pretrial statement in the presentation of our case, and they have to follow the rules and be held to the contents of their pretrial statement in presenting their defense. That is the whole purpose of the statement, is to allow the members of the committee see what is in issue and to see what it coming, what we are attempting to prove.

But to give them ahead of time everything that we have prepared, when they are not locked into anything, particularly in a case in which we allege that he has repeatedly manufactured evidence or testimony, it would be manifestly wrong to hand over to him our case and reward him for once again, not the first time and not the second time, but once again violating the rules the Senate has adopted for proceeding in this case.

Mr. **Anderson**. May I reply?

The **Chairman**. Go right ahead.

Mr. **Anderson**. Representative Bryant, on occasion in argument and again today, assumes the respondent is guilty. He has been acquitted. The suggestion that somehow the rules ought to be different because the House accuses the respondent runs directly against any notion of a presumption of guilt, any notion of it. I frankly resent it. I am counsel to Judge Alcee Hastings; I do not manufacture evidence; Ms. Williams does not manufacture evidence; we are members of the bar, and there are ways of sanctioning us. That is not an argument that should be addressed when these papers should pass.

In terms of whatever tactical advantage we get, we are at some tactical handicaps. I do not know what the capacity of this room is. It is filled to capacity. I sit here with Judge Hastings, Professor Catz, who has been in travel but who aids us when he can; that's it in, folks.

I do not have, as the Chair does, a special staff. I do not have, as the House does, a special staff to aid them. Yes, this might give us a tactical advantage. Weight the tactical advantage that Judge Hastings' accusers have enjoyed for 7 years and ask, are you giving so dramatic that it merits doing it.

Mr. **Bryant**. Mr. Chairman——

The **Chairman**. If you have another statement, I will hear it, and then we have some more matters we need to go onto.

Mr. **Bryant**. I just want to emphasize, 14 of these impeachment articles are allegations of perjury, which is an attempt to distort illegally the system of justice, 14 of the principal allegations pending against him, so I don't know why Mr. Anderson takes offense at these statements I have just made when he has known what they were since August 3, 1988.

Second, I would once again urge upon the Chairman, if you are going to change the rules, we simply ask to be able to withdraw our pretrial statement and submit it again according to whatever rules you set down for us to follow.

Judge HASTINGS. Mr. Chairman?

The CHAIRMAN. Judge, go right ahead.

Judge HASTINGS. I probably am going beyond where Terence is in this particular situation. You see, we didn't file the pretrial statement because physically it is almost an impossibility for us to have done so. That is why it is not done and that is what is important here. I don't really never need to see their pretrial statement. Quite frankly, I don't even need their pretrial statement. We can go in this particular matter and handle it from the standpoint of the facts without it; therefore, fine, please sir, don't give us their pretrial statement. Give us time to prepare the pretrail statement in an orderly procedure; that is all we are asking. I don't need any tactical advantages. They don't have anything that is alarming to me.

The CHAIRMAN. Let me ask you to clarify it. As I said, after we argued your motion for reconsideration or rescheduling, I think we should proceed with the rest of this meeting here on the assumption that we are going forward on the 10th of July. The committee has not changed that yet.

Given that assumption, is it your position that you do not object to their reguest that we keep *in camera?*

Judge HASTINGS. Given that assumpiton, I don't have a problem with it all, even if it were to be July 20th. They don't have anything that I don't already know, and I don't have anything that that they don't already know. You are the person that doesn't know, and that is why I want to have it done correctly.

Mr. ANDERSON. I defer to consel. Our position is that we will not object to the House request.

The CHAIRMAN. You will not object to the house request to keep that *in camera?*

Mr. AMDERSON. It is rough when you represent a judge.

The CHAIRMAN. All right. Let's go on to the third item, use of prior testimony at the evidentiary proceedings. The House has made several requests to use prior testimony at the evidentiary proceedings, and maybe the House would be in a position to summarize what those requests are. I understand Judge Hastings objects to the use of the prior testimony except in those circumstances where its admission would be permissible for non-hearsay purposes or under one or more established exceptions of the hearsay rule.

If we could have a discussion on that issue, Judge Hastings has made some requests, one of which I understand the House does not object to, and one of which the House does.

Are you in a position to go ahead and explain what requests you are making with regard to the use of prior testimony?

Mr. BRYANT. Mr. Chairman, we have asked for the right, in order to save time, to use the prior transcribed testimony of the witnesses whose credibility is not an issue. There are two categories. There are those whom we do not want to call, who we would simply like to introduce testimony from them through the transcript, and there are those who we will call, if we have time, but if we don't, we would like to be able to submit their testimony through the use of the previously transcribed testimony.

This testimony is either testimony or testimony at trial, testimony before the investigating committee of the Judicial District, and in one case grand jury testimony.

Now, with regard to the request to use prior testimony on the part of the respondent, he has requested that his Merritt, who is decreased, that his testimony be permitted to be entered in evidence, and we agree with that, as to, we agree with the use of transcripts. We would, of course, reserve the right to object on grounds of relevance or some other grounds at the time of trial if we chose to do so.

Secondly, they have asked to put into evidence the entire trial transcript from the criminal trial of Judge Hastings in Florida. We obviously object to that. It is being offered for the purpose of showing what the jury saw, which is totally irrelevant to this proceeding and would in no way be justifiable in terms of proving or disproving any factor which is before the trier of facts in this case.

That is our position with regard to our request for prior testimony and for their request for prior testimony.

The CHAIRMAN. Let me call on Mr. Anderson to address both issues, if you would, what position you take with regard to the request the House has made and what your position is with regard to your own request to introduce the Hastings trial transcript, the Federal court trial transcript as part of this proceeding.

Mr. ANDERSON. Well, let me deal with the latter first, if I might, Senator. I believe both the vice chairman's remarks before the Senate and everyone has conceded that the question of what weight, if any, should be accorded the prior jury verdict of acquittal is a matter committed now to the conscience of every individual Senator.

There have been suggestions that manufactured evidence, the rest of it, is there new evidence or is there not new evidence. The baseline from which Senators will make that assessment, it seems to me, is the record in the 1983 trial, were these issues fairly argued to a jury of 12 who sat there and heard every witness and assessed the credibility, or is there something new that should move this body to go elsewhere.

I also must admit that I, at times, think that the—I hear the argument being advanced that his committee should receive everything, leaving it to the Senate to assess its relevance and materialty, and at the other side I get a sense, between the House's motion *in limine* and thir objection today, that, really, everything the House tenders, the relevance should be left to the Senate and when Judge Hastings tenders something to be scrutinized.

I think the issue is squarely before the Senate in this, the first cause involving an acquitted judge, as to what deference should be given a jury verdict, and I think the Senate and the Senators are entitled to have available to them the record of the 1983 trial, in order that they may determine whether it is relevant and what weight should be given to the fact that these charges were fully prosecuted by competent aprosecutors, they were heard by a jury, presided over by a conservative judge, and I think they are entitled to that, so on that point I do believe that we are entitled to have admitted in evidence here, not for the truth of the matter, but to prove the content of the trial, that record.

Mr. BRYANT. Mr. Chairman, if I might——

The CHAIRMAN. Counsel is just alerting me to the fact that it is getting a little unclear as to exactly the purpose for which this is being offered, the trial transcript. I mean is it—perhaps you could clarify, Mr. Anderson, what purpose you would—are we offering this to demonstrate the extent of the trial, we are offering this to demonstrate the truth of the statements made by witnesses at the trial? For what purpose would you propose that we include this entire transcript in this record?

Mr. ANDERSON. With the exception of Mr. Merritt's testimony, we are not offering it for the truth of the matters asserted. We are only offering it to prove that the matters asserted there were asserted in the presence of the court and, in the case of testimony, in the presence of the witnesses, to establish the fact that the accusations made, the first 15 articles of impeachment were in fact tried to a jury more than five years ago, and were in fact fairly tried, and there is no new evidence or no material new evidence in support of that.

We are offering that so that individual Senators who may be troubled by the fact of reprosecuting an acquitted Federal judge may determine what deference, if any, they individually wish to accord that jury verdict of acquittal. The Senators will be in the posture of not having heard the testimony live. They will be in the posture of not having observed the demeanor of the witnesses or the accused when they were confronted, and they will be in the posture of knowing that a jury of 12 of their citizens was in the position of observing the demeanor and assessing the credibility and assessing, frankly, this man's credibility, in light of that record.

If there is no new material, no new evidence, I would be very surprised if there were not Senators and, in his light of his remarks, including the vice chairman of this committee, who decided that the Senate should defer to that and use that as a predicate either for voting to acquit or for announcing "present" on the day of the vote. We seek to introduce the record for that purpose.

The CHAIRMAN. Well, I think this is a different understanding than I had had. I guess what we are trying to determine in this whole discussion is to what extent are you opposing to introduce prior testimony in order to obviate the need to call witnesses at this trial?

Mr. ANDERSON. This is not a prior testimony issue. We have made it——

The CHAIRMAN. You are not requesting that this be introduced for that purpose, you are requesting it for a totally different purpose.

Mr. ANDERSON. As an exhibit.

The CHAIRMAN. As an exhibit of what has gone before.

Mr. ANDERSON. And I think we have articulated——

The CHAIRMAN. But the House objects to it even as an exhibit, as I understand Mr. Bryant's response.

Mr. BRYANT. Mr. Chairman, we understood it was being offered for precisely the reason that the respondent said it was being offered just a moment ago. It is, in effect, a revisitation of the issue of double jeopardy, which was disposed of by a vote of 93-to-1 in the Senate, the first time the Senate took this matter up. It is an issue that has no relevance whatsoever. This is a trial of the allegations in the impeachment articles and all the evidence must, in order to be relevant, be admissible, bear on whether or not he is guilty of committing these offenses or not.

What he wants to do is offer this into evidence, as he just said, so that Senators can consider whether or not they are going to be swayed by the fact that the jury found something in a trial five years ago. It is totally irrelevant, and it has already been rule to be irrelevant by the Senate.

The CHAIRMAN. Let me ask Mr. Anderson, if you would take the House request. Now, you have not yet addressed that, and if we could just take each of them and ask your point of view, I gather you object to these. But let me ask, just go down the list, there are only about eight or nine here, I think.

Mr. ANDERSON. You will know from my tone of voice how strongly I object. Yes, I, in principle, object to the use of what I consider rank hearsay. It is my understanding that the original of the hearsay rule arose from the travesty of the impeachment of Sir Walter Raleigh in 1603, and it seems to me we are recreating discarded——

The CHAIRMAN. Let me take the first, the first request that they have here on the list that I had presented to me, is the Investigating Committee's testimony of Richard Lowe, who is an airline records expert. Now, they evidently would like to be able to introduce that testimony and, by doing so, not have to call Mr. Lowe as a witness in this trial. That is my understanding of their position. Now, why is that objectionable to you?

Mr. ANDERSON. It is objectionable in principle, but my voice is not raised so high as to suggest that I am shouting at you about it. I think it is difficult to say it is always, especially when you are dealing with complex technical records, useful for the committee as well as for counsel to have the witness there to explain questions that may arise.

I understand we would have the right to object to specific assertions in the testimony. I just think it is going to be messy. I object to it on the grounds that it is hearsay, I think it is going to be messy, I don't think it is going to promote it, but I am not objecting in my loudest voice.

The CHAIRMAN. But you would understand that you have full authority to call witnesses to contradict any of those records for extract testimony that contradicts any of those records if that is part of your case.

Mr. ANDERSON. Senator, let me come to you and just—please hear me out on this, I won't raise my voice, but this is a point of true importance.

Judge Hastings wasn't at the Investigating Committee. The House framed its investigation. The Senate Impeachment Trial Committee, one of its other unprecedented things, has now decided on a time allocation rule, to run this by the clock, *a la CBS* v. *Westmoreland*.

To the extent the Senate has a body of testimony that it can put in with the flash of a microsecond or before the trial begins, to say to us, but, of course, you could call someone. It means that they can use their time off the available resources for what they wish to focus upon, and shift, in effect, the burden to us, if you don't like the way those things do, you call them and waste some of your trial time trying to develop it.

Now, they happen to have a body through the investigating material of prior testimony, which is larger than that would be available to us. I just don't think—now, it has the hearsay problem to begin with, and it has the secondary problem of skewing the committee's time allocation by, if you want to cross-examine Lowe, call him, take an hour if you want to develop it.

The Senator I know was not present, but there were proceedings conducted yesterday which I understand, even after we left, ran on for four and a half hours, simply eliciting the testimony of one witness.

Now, this is going to be a complex, you are going to have problems with your time allocation, I predict, but it skews the problem further if one side is getting 25 hours plus 12 witnesses through prior testimony, and the other side has to do it all raw and has to use time to call for cross-examination witnesses.

The CHAIRMAN. Let me see if the House had any short comments. You have given your general position on all of these, but if you had any short comments on Mr. Lowe in particular, go ahead and state that now and then we will move to the——

Mr. BRYANT. Mr. Chairman, this gentleman's testimony concerns information contained in Eastern Airline's records for flights for Judge Hastings. It is not hearsay, first.

Second, this testimony is available and has been long available to Mr. Anderson to read and see whether he has problems with it and whether it presents a serious problem to him. If it does, he can call or insist that—he could call this witness on his own, to have him testify to clarify something he believes has not been made clear.

The idea that it is hearsay is—I would say I think it would be a fair question to ask Mr. Anderson, has he read the testimony of Mr. Lowe and these other ten people before he expresses his opinions today in this hearing.

Have you read them, Mr. Anderson?

Mr. ANDERSON. I would be happy to answer. Yes, I have.

Mr. BRYANT. Well, I think a more specific point should be forthcoming from you if you have indeed read them, instead of a general complaint that there is hearsay.

The CHAIRMAN. Well, let me go to the second item, Investigating Committee testimony of Willie James Washington, who is an airlines reservation specialist. Is your position the same with regard to——

Mr. ANDERSON. The same position, nothing there.

The CHAIRMAN. The third is grand jury and investigating committee testimony of Daniel Simons, who is Judge Hastings' former law clerk, who is said to be unavailable as a witness. Do you have a different position——

Mr. ANDERSON. I do indeed, and you now hear my voice rising.

The CHAIRMAN. You could express your objection.

Mr. ANDERSON. The idea of using grand jury testimony which was conducted in the—the committee has already ruled that we are at least entitled to challenge the motivation of those executive officers who constructed this investigation. The grand jury was a part of their consideration. The use of grand jury testimony, where Judge Hastings has never had the opportunity to be confronted—Judge Hastings was excluded from that room. The very notion of using grand jury testimony as substantive evidence at a trial, when the witness is not on the stand, that would not, under the Federal Rules, under the unavailable witness, that is not something which could be brought forward.

If Mr. Simons has difficulty attending, it could be used to refresh his recollection, and there might come a time when it would be there—no, Your Honor, I sputter, but I leave it to you, to your counsel. The use of grand jury testimony against an accused, as substantive evidence on the grounds that the witness may be unavailable, it has been a long time, seven years, and one of our arguments is that it prejudges the respondent because he didn't have a grand jury to run around and collect testimony while it was fresh. Don't handicap us further and permit them to preserve while we suffer the deaths and the witness——

Mr. BRYANT. Mr. Chairman, this situation is different than the others. First of all, we are not working under the Federal Rules in this proceeding. It is up to the committee to decide with regard to each proffer of evidence what they want to accept.

Second, this witness has leukemia and is overseas receiving treatment and is not available.

Third, this witness was a law student working in Judge Hastings' chambers in October of 1981, and grand jury testimony which he gave at the time, for which he had no motive for giving, is of value to this committee in determining the facts.

I think that is very plain and very little more can be said about it, and I think that the Senate ought to seek out and judge on its own, by its own lights, whether or not this evidence has weight or not. The question should be with regard to the weight of this evidence, not its admissibility. All of the objections Mr. Anderson raised can be considered by the Senate committee as they decide whether or not to believe the transcript of Mr. Simons' testimony.

The CHAIRMAN. Let me go on to the fourth request that the House has made, and that is the Investigating Committee's testimony of Neal Sonnett, who represented Frank and Thomas Romano after their conviction.

Mr. Anderson, could you state your objection with regard to introduction of that testimony?

Mr. ANDERSON. Yes, we were not present when Mr. Sonnett testified and we would welcome his presence as a live witness, where he can be confronted and examined and these matters placed in context. We are not sure that we will, as Representative Bryant has, reserve the right to object to anything, but this is rank hearsay being offered from an available witness, from a proceeding at which Judge Hastings was not present, for no good reason that I can understand.

Neal Sonnett is one of those South Florida people who is suffering from Alcee's disability, from whom you will hear no complaint about the amount of time you give this man. He is a senior member of the bar. The committee ought to hear him, they ought to see him. He was Romano's lawyer. He can aid you in a number of ways. He is on our witness list, he is on their's. Don't simply consume or save time for the House to throw in this little transcript and then say go forward.

The **Chairman**. I gather the House has called a vote and you need a 10-minute recess. Would you want to briefly state your position on this before we recess, and then we will go on to the next item when you return?

Mr. **Bryant**. Yes.

Mr. Chairman, with regard to Neal Simons, Judge Hastings and his counsel had the opportunity to be present at the Investigating Committee and refused. They could have been there.

Second, it is valuable testimony. We are trying to save time, and if they want to call him to further clarify or to rebut something he previously testified, they can do so. In fact, he said he is on their witness list. We are simply trying to save time. If we are given more time, of course, we will call him in person, but the offer here is to save time.

The **Chairman**. Why don't we adjourn for 10 minutes. When we return, we will run through this list of House requests.

[Brief recess.]

The **Chairman**. The committee will come to order.

Let's continue through the list here. I think we finished with the arguments on the issue of the Investigating Committee's testimony of Neal Sonnett, and now the next item that the House requested the right to introduce prior testimony on was in *United States* v. *Hastings*,- the trial testimony and the Investigating Committee testimony of Madeline Petty, a social acquaintance of William Borders, who testified that she accompanied him to Las Vegas on September 16, 1981.

Mr. Anderson, maybe you could describe the basis for your objection to that testimony.

Mr. **Anderson**. Yes, Senator, I could illustrate another point that concerns me and should come up. In both instances, this testimony is hearsay and would not be admissible. With respect to her investigating committee testimony, it is unexamined hearsay.

If this were a slip and fall case that was being tried, this couldn't be done. This is not——

Mr. **Chairman**. This could not be introduced?

Mr. **Anderson**. No. This is an impeachment. I understand that there is a desire to do these things efficiently. I have appeared before impatient judges who were looking for shortcuts. The system we have evolved, this is a trial. I understand that until this time, for most of you, you are involved in the legislative process where prefiled testimony is the norm. I sat through part of a proceeding, where it was thought normal to have a lawyer coach his witness on factual errors during the course of testimony. That doesn't happen in a real court.

This is a trial. I understand your desire to be efficient, but it is the highest form of trial in our Constitution, it is a privileged matter. I think when you begin to use hearsay like this in the name of efficiency, it simply is wrong. I think the use of the committee, it is no secret, we are on a slipper slope in the Constitution here, but I do not think the saving of time should be the objective, and I do think it is unfair to put in hearsay like this and then say, well, Judge Hastings, you can use some of your time to call them.

If there is to be an impeachment trial, let there by an impeachment trial that conforms to a trial.

The **Chairman**. Let me call on the House managers to respond, if they would like, on that item.

Mr. **Bryant**. Mr. Chairman, both in the case of Mr. Sonnett, which we just discussed, and the case of Madeline Petty, their testimony was offered at trial and their testimony was not challenged by the respondent when he had the opportunity to challenge it.

And with regard to testimony before the investigating committee, once again, he had the right to be present and he refused to be present. I think it is wrong for us to reward him for refusing to be present. He chose not to be present, so be it.

Nevertheless, the credibility of these two witnesses was never challenged and we simply are trying to save time by offering their testimony as opposed to bringing them here and having them testify again. Again, if Mr. Anderson doesn't like it, he can call them as witnesses. I would point out that Mr. Simons was his witness at trial.

Mr. **Anderson**. Senator, just one point in reply.

The **Chairman**. Yes.

Mr. **Anderson**. We observe a distinction. There is a distinction between prior testimony where a witness is unavailable. To the extent that there is any issue about whether Judge Hastings was or was not, had an opportunity at the Investigating Committee to cross-examine, that would only kick in under the rules of hearsay as now codified in the Federal Rules, if in fact the witness were unavailable. There is no exception to the harsay rule for using prior testimony of an available witness of this kind.

Mr. **Bryant**. I think it would be valuable if some combination could be agreed to with regard to the extent to which the hearsay rule is going to be applied. If it is going to be strictly applied, we should know it, and if it is going to be applied on a case-by-case fashion, then we can control the request we make to the Senate committee.

Our goal is to cut this thing down in terms of the length of time used, and we have offered transcribed testimony in which the credibility of which has never been challenged and we have not offered transcribed testimony where the credibility is an issue.

The **Chairman**. Let's go on to the sixth item, Investigating Committee testimony of Joel Hirschhorn, Judge Hastings' former attorney, who testified concerning his document production on behalf of Judge Hastings.

Mr. Anderson, what is your position with regard to the introduction of that testimony?

Mr. **Anderson**. We object most strongly, Your Honor. Mr. Hirschhorn was appearing in a proceeding where he was trying to cautiously and carefully deal with the question of the attorney-client privilege and other matters. I think he needs to be present before this committee, where those decisions can be made with caution. I do not think such snippets as were brought out in the Investigating Committee, where Judge Hastings was not present—I just find it inconceivable with respect to an available withess of a fairly central kind, that this committee would permit the use of prior testimony.

Hearsay does apply in impeachments. The House recongized it even in inquiries up until recently. The Senate, as far as I can determine, has recognized it. The House of Lords. recognized it. The impeachment of Warren Hastings, in the view of most people, that Hastings was acquitted because the House of Lords applied the rules of evidence.

When we talk about changing the rules in mid-ball game, recognize you are changing them for Judge Hastings.

Judge HASTINGS. As pertain to Hirschhorn, too, Senator Bingaman, I have not released him the attorney-client privilege, and that is another reason.

The CHAIRMAN. Do the House managers have a statement to make with regard to Joel Hirschhorn's testimony?

Mr. BRYANT. Yes, Mr. Chairman, Mr. Baron will respond for us.

The CHAIRMAN. Go right ahead.

Mr. BARON. Mr. Chairman, with regard to Hirschhorn's testimony, if we were to call him as a witness, we would call him only for that limited purpose.

The CHAIRMAN. What limited purpose?

Mr. BARON. Exactly as we have laid out here, he participated in the exchange of documents with the government pursuant to the court's first reciprocal discovery order, they didn't include these alleged letters, the so-called letters for Hemp, and Mr. Hirschhorn testified concerning that discovery process. In fact, Mr. Hirschhorn said, although he was counseled, he had never seen any such letters. It is a very limited, specific item that we would want to produce.

Again, if Judge Hastings wants to get more from Mr. Hirschhorn, that's fine, that's part of his case, it is not part of our case. We just wanted this very limited item. I don't think there is any dispute, the fact that Hirschhorn said that to government proscutors.

Again, I think we come back to really a fundamental issue here. We understood from the—I believe it was in the report of the Rules Committee, and maybe something that was said in the course of the proceedings of this committee, that the strict rules of evidence were not going to be applied here, that we would use the Federal Rules of Evidence as a kind of touchstone, but that it would be much more flexible and open than that.

We know the difference between what's hearsay and what's not, and if we are going to apply those rules, that's fine, we will do that. But if we are not going to apply those rules, these are the kinds of witnesses where we can use their prior testimony and feel confident that the committee is being informed about what the facts are.

Mr. BRYANT. Without prejudice to the respondent.

Mr. BARON. Again, if he really feels there is an issue here, let him call the witness.

Mr. ANDERSON. Senator, may I reply briefly?

The CHAIRMAN. Yes, please, briefly.

Mr. **Anderson**. This will be, as far as I can tell, if it is done, the first impeachment in this Nation's history where the rule against hearsay has not been applied, be it the common law rule or be it the other.

What the House is doing in the interest of conserving time is unprecedented. Now, I undertand in the Rules Committee and as I understood this early order, we were looking to the rules for guidance and they might not be strictly applied, but that may have some bearing on authentication and other problems.

Surely, we are not going to return to the day of Sir Walter Raleigh and abolish the rule of hearsay in impeachment trials.

The **Vice Chairman**. Mr. Bryant, do you know—Mr. Baron, do either of you know if hearsay has not been accepted in any prior impeachment proceeding of the Senate?

Mr. **Baron**. I have research on it. Off the top of my head, I am a little reluctant to just try to recall what that research shows. I do recall reading in an article in the Kentucky Law Journal, which had a whole issue devoted to impeachment, a whole symposium on impeachment, and I recall that there was a quote, I think it was from Professor Burbank in which he said that the Rules of Evidence should not be strictly applied in impeachment, and specifically says that hearsay—and it was a witty quote, something along the lines that "it is one of those rules that does more for the careers of law professors than for the search for truth." I will get you the exact quote, it is better than my parenthetical.

The **Vice Chairman**. That quote doesn't go to the question, not whether it should be, is there a precedent that it does not apply, that the hearsay rules not apply.

Mr. **Baron**. I would have to check to be sure, but that research has been done and I could check it, but I don't know off the top of my head.

The **Chairman**. If there is no more need to discuss this, why don't we go on to the next item, the seventh item of testimony in the Investigating Committee, testimony of Carolyn McIver, Andrew Chisholm and Eleanor Golar-Williams, each of whom testified before the Investigating Committee that Mr. Hemphill Pride did not have access to their telephones.

Mr. Anderson, what is the basis for your objection to that testimony?

Mr. **Anderson**. Andrew Chisholm is a political figure who knew Bill Borders, going back into I believe the early Carter campaign, and he also testified there regarding that matter.

Carolyn McIver knew these people and had contacts and can bring it forward.

Eleanor Golar-Williams, I think the Chair may recall that one of my more passionate objections on telephone stipulations related to the fact that this is Patricia Williams' daughter's grandmother and former mother-in-law to Patricia Williams.

I don't think you just slide these people through and say these are also the, in terms of establishing a central fact with respect to three of the articles—or four, I'm not sure which it is. These are the central witnesses and we are going to do it all by hearsay, when the witnesses are available?

It was Raleigh who stood in the House of Lords and said they are across the street, get them, don't listen to what Lord Probem says. I say the same.

The **Chairman**. Okay. Mr. Bryant, did you have a position on this that you wanted to express?

Mr. **Bryant**. First of all, I don't think Mr. Raleigh was allowed to call witnesses at his trial, and Mr. Hastings is.

Second, with regard to McIver, Chisholm and Golar-Williams, I would point out the fact that in his answer to the articles of impeachment relating to these instances of alleged false testimony, Judge Hastings admitted that his testimony was false.

All we are offering there is transcribed testimony to show that Judge Hastings, in his testimony, said that he called Hemphill Pride at phone numbers, all of which belonged to these three persons, and these three persons have testified that Hemphill Pride would not have access to their telephones and therefore we submit that Judge Hastings' testimony with this regard was false. No one ever challenged their credibility.

Mr. **Baron**. There is one other thing I might say. I think we divided these proffered prior testimony into two categories. The first category were ones where we simply intended only to offer their prior testimony. This group falls into category, what we call category two, where we wanted to retain the option not to call them. Again, if time is running out and we are going to have a clock running on us, we have got to reserve time for cross-examination, we have got to reserve time for rebuttal. If the clock is running out on us, what we wanted was the option not to call these witnesses and offer their testimony in lieu of an actual appearance, because we have to watch the clock.

Mr. **Bryant**. That is why at page six you see a group with the Roman numeral II, you separate out the two types of witnesses.

The **Chairman**. The final request from the House that I have on my list is Investigating Committee testimony of Laverne Boone, who is an airline records expert.

Mr. Anderson, did you have anything you wanted to say to explain your objection to Laverne Boone's testimony?

Mr. **Anderson**. The hearsay rule, and it would be the same as Richard Lowe and Willie James Washington. Impeachments are just too important to run it.

The **Chairman**. Did the House managers have anything to add with regard to Laverne Boone? Is it your position also that it is essentially the same legal question as the one raised by Richard Lowe?

Mr. **Bryant**. It is, Mr. Chairman. I don't think we can add to what we have said.

The **Chairman**. That concludes the list of House requests that I had. Does the House has requested that we admit prior testimony into evidence in any other case?

Mr. **Baron**. There is one other witness whom we intended to file as a supplement, a woman names Louima Romano. She was the wife of one of the Romano brothers, I don't know which one she was married to. I believe her testmony was to the effect——

The **Chairman**. How do you spell Louima?

Mr. **Baron**. L-u-i-m-a, I believe—L-o-u-i-m-a. Her testimony related to a call that she received, I believe it was on April 7, 1981, from a man named Moscatto, trying to reach her husband in California, and she spoke to her husband out there, and it really doesn't fix a date for——

The **Chairman**. Where was this testimony given?

Mr. **Baron**. I know she was before the Investigating Committee.

The **Chairman**. I think it is probably not fair to require Judge Hastings and his counsel to respond to this kind of a——

Mr. **Anderson**. I would be happy to, Senator.

The **Chairman**. If you want to go ahead at this time, you can.

Mr. **Anderson**. As I understand the proffer, it will be testimony of Mrs. Romano that she received a call from someone who identified himself as Philip Moscato asking to speak to her husband. I can work through the levels of hearsay, if you want, but Ms. Romano's report of what Mr. Moscato said on the phone would be hearsay, at least hearsay level one. Ms. Romano's testimony would be hearsay level two, and now we are offering a transcription of that through, I am sure, an able court reporter here, and this is to fix the substance of a date on when that occurred.

Senator, the Romano brothers are dead. I wish they weren't. I wish they could be called. If we are to hear anything Ms. Romano has to say, I think we should hear Ms. Romano.

Mr. **Baron**. Senator, may I make an observation?

The **Chairman**. Go right ahead.

Mr. **Baron**. With all due respect, I don't think Mr. Anderson's understanding of the hearsay rule and my understanding of the hearsay rule are one and the same. Ms. Romano reports that "X" called her on a certain date and said something, that is not multiple hearsay. You are not asking for the truth of what that person said when he called her, it is simply the fact that he called. That is not hearsay.

The **Vice Chairman**. What's the problem of bringing her in?

Mr. **Baron**. We're not sure where she is. We have tried to locate her, but what we have understood, we contacted Sonnett, her lawyer, and he did not know where she was. It is possible we could——

The **Vice Chairman**. She testified in another proceeding?

Mr. **Baron**. She testified before the Investigating Committee. Our concern is we may not be able to find her.

The **Vice Chairman**. So, your application might be under an unavailable witness line——

Mr. **Baron**. Correct.

The **Vice Chairman** [continuing]. Depending on whether or not that transcript is admissible for that purpose?

Mr. **Baron**. That's correct.

Mr. **Bryant**. Again, it is being offered to show that the call was made, and not to show that there was truth in the statement she heard on the phone.

Mr. **Baron**. And to specify a date. It is not the content of the call.

The **Chairman**. So, I take it you are in the process of preparing a supplemental request that you will file and we will be able to consider that at some point?

Mr. **Baron**. That's correct.

The **Chairman**. Is there anything else that we need to consider under this heading of House requests for submission of prior testimony or Judge Hastings' request for submission of prior testimony?

[No response.]

The **Chairman**. If not, let's take about a 10-minute break while the Senate goes to vote and then we will return and proceed.

[Short recess.]

The **Chairman**. The committee will come to order.

Let's continue. The next item I want to get people's point of view on is one of the issues that we tried to get some consensus on or direction is on what documents are to be admitted into evidence. As part of the pretrial statement that the House filed, as requested, they listed their exhibits, their expected exhibits.

Now, we also in this order that the committee issued on the 8th of June provided that both parties shall, on or before June 27, '89, file and serve a statement for each document or item of evidence listed on the opposing party's list, which unequivocally states whether objections are to be made to admission of that document or item, without need for formal proof as to its authenticity or genuineness, and, more appropriate, its status as a record of a regularly conducted activity or a public record.

I guess the question that we need to get people's opinion on is, in order that Judge Hastings respond to the list and comply with this order, respond to the list of exhibits that the House has filed, we would have to make that available to the judge, the House would have to make that available to the judge.

Judge Hastings has not filed any list of proposed exhibits, so the House obviously is not under any obligation to respond as this order has directed. I guess first I would like the House point of view, the House managers' point of view as to whether it is appropriate for us to transmit to Judge Hastings or appropriate for us to direct the House to transmit a list of the exhibits so that we can get this response.

Mr. **Bryant**. Mr. Chairman, we would hold the same position we expressed at the beginning of today's meeting, that the respondents not be provided with the filings that we have made today, and made *in camera*, because we knew he was not going to make the filings he was required to file.

Until he has filed his filings and given us a copy of what he has, we believe he should not be rewarded, now refusing to follow the rules set down by the Senate committee. If you choose to change the rules and give us another date on which to file, we will withdraw and file again on that date and ask on that date to be allowed to see the respondent's documents also. It is simply unprecedented to require one side to lay out everything and not require that of the other side.

The **Chairman**. Mr. Anderson, perhaps you would like to express your point of view as to what action the committee should take on this.

Mr. **Anderson**. Judge Hastings has expressed the position that we will honor the House's request that they be kept *ex parte* until such time as we have made a filing, so I bow to the wishes of my client.

The CHAIRMAN. The next item I have on my list was the question of Mr. Nesline's competency to testify. He is not on the House list and we had deferred any determination as to whether to authorize a pretrial examination of Mr. Nesline, pending receipt of some more information on his competency.

Now, the House provided information to the committee. They have not provided it to Judge Hastings.

Mr. ANDERSON. We received it today.

The CHAIRMAN. We have transmitted it to Judge Hastings just today.

Mr. BRYANT. It was never requested to the House.

The CHAIRMAN. We understand, that in our order we did not direct you to provide it to Judge Hastings. We directed you to provide it to the committee.

I guess the question is whether Judge Hastings plans to call Mr. Nesline and what——

Mr. ANDERSON. We do.

The CHAIRMAN. You do?

Mr. ANDERSON. We will have to review the competency, but, yes, he——

Judge HASTINGS. If he is competent. At yesterday's proceedings, Senator, the limited time that we were there clearly points out that Joe Nesline becomes a vary crucial witness. William Dredge, in the limited time we were there, used his name 14 times that I recall, and I would like to hear what Joe Nesline has to say with regard to what William Dredge had to say, and I think you should, more than I should.

The CHAIRMAN. I guess the fair thing is to permit Judge Hastings and his counsel to review the information that has been provided by the House before we require final information on it.

I am advised by counsel that we are still awaiting a statement from Mr. Nesline's attorney on this same issue, as to his competency, and maybe when we receive that, we will, of course, make it available to both counsel, both sides.

Let me call on counsel for the committee, Elaine Stone, to give a status report on the stipulations or the efforts to arrive at a stipulated order on some of the facts, so that is just for the information of both parties.

Ms. STONE. Last Friday, we provided a draft document to both the House and to Judge Hastings so that the parties would have a sense of how committee was expected to rule on this matter in time to use that information in preparation of the pretrial statements.

That draft document, which did no more than provide the bottom line of disposition for each stipulation, was given to them on Friday and we anticipate that the committee's order will go out tomorrow.

The VICE CHAIRMAN. Does anybody have a question on that?

[No response.]

The CHAIRMAN. Let me go on and ask the parties to both express themselves on the question of the format that we should use in the hearing when the trial commences and how we should proceed. It is a subject we discussed at an earlier meeting with counsel. If either of the House managers or Judge Hastings or his counsel have an additional point of view or recommendation to make to the committee, we would like to hear that at this point.

Let me call on the House managers first. Do you have anything additional to urge on the committee with regard to the format of the hearing?

Mr. Bryant. Mr. Chairman, we only would urge that the committee adopt the procedure of proceeding for basically all day every day, every weekday, until this matter comes to a conclusion, so that the evidence might be received in consecutive fashion, without large gaps of time in between the days of trial.

It is a complicated matter, I think it is very important for the witnesses, each consecutive witness to be seen in the context of the whole case, rather than to be seen out of context due to gaps in the period of time in which the case is being tried.

The Chairman. Mr. Anderson, did you have any position that you would like to express to us about how the hearing should proceed as far as the format of the hearing?

Mr. Anderson. Too, I think they should replicate a trial as near as may be possible in these circumstances. I agree with Representative Bryant that it would be—I'm not sure I want terribly to run too late in the evening, simply because of the amount of time we will be catching up, but I think full trial days.

I would sugest to the committee—and I guess it would require some action for the managers—that in the trial of an impeachment before the Senate, that you are trying to replicate with this committee, the legislative business is suspended. I frankly don't know what's involved. I do recall the first time we met with the committee, we had 6 minutes of hearing in the first hour because of the voting buzzers, and I don't know what would be required, but it does seem to me that we are treating this seriously as matter of impeachment, the legislative business of at least the 12 Senators involved in this committee should be suspended and they should honor the notion that the sole duty of the Senate, or if it is to be done through the trial, will be the trial of this impeachment.

Mr. Bryant. Mr. Chairman, I might observe that I am not sure how the Senate works, but with regard to the House, the earlier in the day we begin, the more hours we will have without interruptions by House votes. We generally go in about 11:00 or 12:00, and no earlier, sometimes earlier, but generally we don't.

Mr. Gekas. May I add to that, if I may, that we discussed prior the time allotted to us that Mondays and Tuesdays are prime-time for at least the House side, because there would be very little voting activity, if the past is any prologue to what will happen in July, so Monday and Tuesday will be good days to work solidly.

The Chairman. If there is nothing else on that issue of the format——

The Vice Chairman. Let me just ask if Judge Hastings has any——

The Chairman. Yes, go ahead.

The Vice Chairman. I would just make the comment that it is not realistic to suspend the legislative business of the Senate. We will attend to this matter, but there are legislative matters which cannot be suspended.

The Chairman. Let me ask, this is a subject that we raised at each of our prior meetings, I believe, at least the last one, and that is the question of whether Judge Hastings intends to call William

Borders as a witness. A pleading was filed on that subject that purports to state the position of Judge Hastings on the issue. Is there anything more that——

Mr. **Anderson**. Since that pleading was filed, I have done almost nothing—no, nothing has changed.

The **Chairman**. So, you have nothing to add to this pleading?

Mr. **Anderson**. Nothing to add, no.

The **Chairman**. Does the House have any change in its position? The House's position is you do not intend to call him.

Mr. **Bryant**. We do not intend to call him. However, if he is called, we will cross-examine him.

The **Chairman**. Understood.

The **Vice Chairman**. I had inquired of the House managers who advised me informally and I think it is worth putting on the record, that an effort had been made by the House managers to call Mr. Borders in the House proceedings on two occasions, and on the first occasion a representation was made by Mr. Borders that there might be a violation of his probation or parole?

Mr. **Baron**. I believe it was his parole conditions.

The **Vice Chairman**. And that the House managers made a determination that it was not a violation, but Mr. Borders stuck to his objection and four days after his parole or probation was concluded, then a second effort was made to call him as a witness and he declined, and that the House did not pursue the matter because the felt that, without contempt powers enforcement procedures under the House rules it would be futile to do so and that the House felt that it could establish its case without Mr. Borders.

Mr. **Baron**. That's correct.

The **Vice Chairman**. But there was no concern about calling Mr. Borders for any other reason.

Mr. **Bryant**. We viewed the case as being overwhelming.

Mr. **Baron**. Also, he never cited any safety concerns, which have sometimes somehow arisen over here. He never articulated that, that he was concerned that if he testified that somehow his safety was threatened.

The **Chairman**. Is there any other item, then, that either the House managers of Judge Hastings or Judge Hastings' counsel wish to raise at this point?

Mr. **Anderson**. There is one other matter I think that I should at least alert the committee to. There was a second supplemental or something adding or proposing to add a witness, John Doar. That is——

The **Chairman**. That is what?

Mr. **Anderson**. That is totally hearsay. We will object most strenously to the testimony of any investigator summarizing what an Investigation Committee hear witnesses say.

The **Vice Chairman**. Again, you are suggesting that if John Doar's testimony were offered into evidence, without him being called as a witness, you would object strenously?

Mr. **Anderson**. No, I am suggesting if John Doar were called as a witness, I would object, that he is incompetent to testify on any matter relevant in this proceeding.

The **Chairman**. Let me ask Mr. Baron to respond.

Mr. BARON. We do intend at this point to call Mr. Doar, but I can assure you that, even by the most stringent hearsay test, John Doar's testimony will not be hearsay.

Mr. ANDERSON. I would also, then, alert the committee that we will then move—we believe that Mr. Doar's credibility is placed in issue, it also places the Investigating Committee, and we will ask you to revisit the limitations imposed by your motion *in limine.* I take it that because they were government witnesses and persons tasking on behalf of the Executive within the limits of its bearing on credibility, we are permitted to explore those issues, if Mr. Doar comes in, his credibility and that of the investigation there goes into issue, and I think it will be something which in some sense I would welcome. I am simply alerting you that there is a potential problem there, pending on——

The VICE CHAIRMAN. You would like to have Mr. Doar qualify with House——

Mr. ANDERSON. If he is called and we are given the full scope of what we think that opens the door to. I would think that would be a hard call. I am just alerting you. It came to me. Senator, I can't take a position until I have some idea what they propose to call him for, but that is going to be a big problem.

The CHAIRMAN. Is there any other item we ought to discuss here in this meeting?

[No response.]

The CHAIRMAN. If not, we appreciate your attendance and we will stand adjourned.

[Whereupon, at 5:24 p.m., the committee was adjourned.]

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT

PHONE (202) 224-5471
TELECOPIER (202) 224-5577

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

MEMORANDUM FOR THE RECORD

Thursday, June 22, 1989

With due notice, the committee met in closed session to deliberate upon pending pretrial matters.

A motion was made, seconded and unanimously agreed to that Judge Alcee L. Hastings' motion to reconsider and reschedule the trial at a later date shall be denied.

A motion was made, seconded and adopted to provide Judge Hastings with the House managers' final pretrial statement with exhibits, to advise Judge Hastings that he is in default of the second and fifth orders of the committee, and to direct Judge Hastings to file his final pretrial statements at the earliest possible time.

Isabel T. McVeigh
Isabel T. McVeigh
Journal Clerk

COMMITTEE ACTIONS: SIXTH AND SEVENTH ORDERS

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA
ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8677

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
DISPOSITION OF PROPOSED STIPULATIONS OF FACT SUBMITTED BY THE HOUSE MANAGERS
SIXTH ORDER

As recited in its Fourth Order, dated May 24, 1989, the committee has undertaken a review of the Revised Stipulation of Facts proposed by the House on March 31, 1989, in an effort to narrow the issues in the pending impeachment proceedings to those matters which are truly in dispute.

In the course of this review, careful consideration has been given to the proposed stipulations, to Judge Hastings' objections both to the stipulation process as a whole and to particular proposed stipulations, as set forth in his written submissions of April 2, May 18, and June 1, 1989, and to the argument of counsel on April 12 and May 18, 1989. In addition, each of the proposed stipulations has been independently reviewed in light of the testimony and other documents available to the committee from prior proceedings.

Based on the above, those proposed stipulations which may properly be accepted and treated as evidence of fact, without need for the submission of formal or additional proof, have been identified for purposes of the committee's evidentiary proceedings. Those proposed stipulations are enumerated in Section I, below. Where an objection or the committee's own review has shown that a proposed stipulation is in some measure factually inaccurate, insufficiently supported by the prior record, or is otherwise objectionable, the proposed fact has either not been accepted (Section II, below) or has been revised to correct inaccuracies or to take account of an objection (Section III, below, and Appendix "A" to this order). Revised stipulations may be treated by the parties as evidence of fact for purposes of the evidentiary hearing, after the parties have had the opportunity, as described below, to review and respond to them.

A number of factors have been used in determining whether each particular proposed stipulation should be accepted and treated as evidence of fact for purposes of the evidentiary proceedings. For example, proposed stipulations generally were accepted where Judge Hastings expressly stated his acceptance or nonobjection (see, e.g., Nos. 156, 182, 198 254-56); where no specific objection was made which called into question the truth or accuracy of the proposed stipulation, and documentary materials and prior testimony, often admitted at prior proceedings without Judge Hastings' objection and often subject to his stipulation, squarely supported the proposed stipulation, (see, e.g, 39, 40, 43-45, 71-72, 77, 90, 186); where undisputed facts were accurately drawn from court docket entries or other court records (see, e.g., Nos. 6-8, 11, 13, 15, 215-16, 219, 225, 227, 228, 302, 312); or where Judge Hastings' own testimony at his criminal trial confirmed the contents of the stipulation (see, e.g., Nos. 4, 5, 89, 184, 188, 195, 288).

Proposed stipulations generally were refused where, for example, one or more of the following circumstances was present: where the proposed stipulation was solely or principally dependent on the testimony of witnesses, such as FBI agents, and/or internal FBI documents, whose credibility and accuracy Judge Hastings has questioned (see, e.g., Nos. 29, 30, 32, 144, 147-49); where they were central to a disputed issue, upon which conflicting testimony clearly will be presented at the proceedings (see, e.g., Nos. 171, 173); where it was concluded that the evidence could be simply and better introduced through a witness' full testimony on a matter or through an unexcerpted transcript of a recorded conversation rather than by excerpts or characterizations of testimony or conversations (see, e.g., Nos. 50, 52, 53, 104, 106, 108, 116, 122, 229-36, 239-40, 243, 244, 248-253, 259-262, 264, 265)[*]; where the proposed stipulations contained characterizations or inferences, rather than simply factual recitations of events, (see, e.g., Nos. 100, 110); where it was not possible to find sufficient support in the evidence known or cited in House filings (see, e.g., Nos. 65, 174, 247, 273), where there was a serious question about the admissibility of the evidence which should be considered at the proceedings (see, e.g., No. 375) and where Judge Hastings interposed specific and substantial objections. Where it was possible to revise a proposed stipulation to correct factual inaccuracies, correlate it more closely to the documentary materials and evidence from which it was drawn or to accomodate a valid objection or concern of the committee, a proposed revision has been made (see Appendix "A").

---

[*] The committee notes that where the contents or meaning of a recorded conversation are susceptible of varying interpretations, the actual tape recording, in addition to a transcript, should be offered.

In issuing this order, the committee has made no determinations as to the relevance of any particular matter. A finding that a particular proposed stipulation will be treated as evidence of fact for purposes of these proceedings is not a determination that that fact is relevant; conversely, a finding that a proposed stipulation should not be accepted does not constitute any ruling that the matters which it concerns are irrelevant. Nor is any party precluded from introducing evidence on or contravening any matter that is the subject of an accepted stipulation. In sum, where a proposed stipulation is accepted, the need for the submission of formal proof to establish the contents of that stipulation as fact has been eliminated. Where a proposed stipulation has not been accepted, the proponent of that evidence must resort to other means of proof.

The parties should advise the committee, on or before June 28, 1989, if they believe that the stipulations as revised contain factual errors or if they otherwise object to their acceptance at the evidentiary proceedings. Judge Hastings' general objections to this process of identifying facts that are not in dispute are fully stated in the record of these proceedings, and need not be reiterated in order to be preserved.

SECTION I

Proposed Stipulations Accepted as Evidence of Fact Pursuant to this Order

A. Airline Records

39, 40, 43, 44, 45, 71, 72, 77, 90, 99, 181, 192, 193, 194, 267

B. Telephone Records

36, 38, 186, 187, 189, 191, 285

C. Telephone Messages

None

D. Hotel Record

46, 73, 74, 91, 132

E. Court Decisions

None

F. Record of United States v. Romano

6, 7, 8, 11, 13, 15, 16, 20, 24, 25, 26, 27

G. Record of United States v. Borders

215, 216

H. Record of United States v. Hastings

206, 213, 219, 225, 227, 228

I. Judge Hastings' Trial Testimony

4, 5, 89, 109, 127, 128, 129, 167, 168, 183, 184, 188, 195, 288

J. Geographical Information

182, 254, 255, 256

K. Nagra Body Recordings

373

L. Other Tape Recordings

101, 103, 107, 115, 117, 121, 123, 125, 361

M. FBI Reports

31, 60, 130, 131, 142, 150, 196, 318

N. 1985 Wiretap Application and Progress Reports

302, 312, 315

O. Miscellaneous Proof

2, 3, 33, 62, 63, 64, 66, 78, 79, 80, 86, 151, 156, 198, 218, 289, 290, 291, 301, 346, 348, 352, 353, 372, 376, 377

SECTION II

Proposed Stipulations Which Have Not Been Accepted

A. Airline Records

67, 68, 69, 70

B. Telephone Records

171, 173, 174, 247, 273, 283

C. Telephone Messages

102, 275, 282

D. Hotel Records

None

E. Court Decisions

None

F. Record of United States v. Romano

100, 110

G. Record of United States v. Borders

None

H. Record of United States v. Hastings

221, 222

I. Judge Hastings' Trial Testimony

169, 170, 180, 229-236, 239, 240, 243, 244, 248-253, 259-262, 264, 265, 287

J. Geographical Information

185

K. Nagra Body Recordings

47-57, 92-98, 141

L. Other Tape Recordings

104, 105, 106, 108, 116, 122, 124, 139

M. FBI Reports

29, 30, 32, 134, 143, 144, 147, 148, 149, 152, 153

N. 1985 Wiretap Application and Progress Reports

None

O. Miscellaneous Proof

59, 65, 81, 82, 113, 135, 138, 140, 179, 223, 224, 263, 295, 375

SECTION III

Proposed Stipulations Which Have Been Revised And Are Submitted to the Parties For their Review and Response

A. Airline Records

61

B. Telephone Records

41, 190, 201, 269, 280, 284

C. Telephone Messages

34, 35, 37, 42, 136, 272, 277, 278, 279, 286

D. Hotel Records

175

E. Court Decisions

21, 111

F. Record of United States v. Romano

12, 270, 14, 271, 17, 18, 19, 118

G. Record of United States v. Borders

202, 203, 214, 217

H. Record of United States v. Hastings

204, 205, 207, 208, 209, 211, 212, 220, 226

I. Judge Hastings' Trial Testimony

163, 164, 165, 166, 266, 281

J. Geographical Information

None

K. Nagra Body Recordings

None

L. Other Tape Recordings

126, 360, 366

M. FBI Reports

133, 145, 146

N. 1985 Wiretap Application and Progress Reports

303, 304, 306, 308, 310, 311, 317, 319, 321, 322, 328, 334

O. Miscellaneous Proof

58, 76, 210, 292, 293, 294, 347, 351, 354, 374, 378

The full text of the revised stipulations is attached to this order as Appendix "A."

Jeff Bingaman, Chairman

Arlen Specter, Vice Chairman

Dated: June 23, 1989

APPENDIX "A"

I. Airline Records

61. During the morning of September 12, 1981, William Borders arrived at West Palm Beach, Florida.

II. Telephone Records

41. On September 11, 1981, two calls were made from the Miami International Airport to the office of William Borders. These calls were charged to Judge Hastings' residence phone.

190. On October 9, 1981, at 5:22 p.m., Patricia Williams called Judge Hastings at a pay telephone at the Baltimore-Washington International Airport from a pay telephone from a location other than her home in Lauderhill, Florida.

201. On Monday, October 12, 1981, at 6:38 p.m., a telephone call was made from Judge Hastings' home telephone number to William Borders' home telephone number. The call lasted 2 minutes.

269. On February 20, 1981, at 7:30 a.m., a call was placed from Judge Hastings' home telephone number (305-731-8176) to William Borders' home telephone number (202-398-6321). The call lasted three minutes.

280. On May 6, 1981, at 12:07 a.m., a telephone call was made from a phone number in Madison, New Jersey, to a phone number in Washington, D.C. That call was charged to Judge Hastings' residence phone.

284. On July 5, 1981, a telephone call was placed from Judge Hastings' home phone number to William Borders' home phone number. The call lasted less than one minute.

III. Telephone Messages

34. On Thursday, September 10, 1981, Cynthia Rogers recorded the following reservation for William Borders for travel from Washington to Miami to West Palm Beach to Washington:

Fri. - Air Fla. #131: 7:30 - 9:45.
Sat. - Eastern #890: 9:25 - 9:51 a.m.
Sun. - Delta - West Palm #608: 7:00 a.m. - 9:49 - Atlanta.
11:20 arrive Nat.
125
46
149 $320

35. On September 10, 1981, Cynthia Rogers made an entry in

the telephone log at William Borders' office reflecting a call at 9:35 a.m. from Judge Hastings to William Borders with the message "not coming to D C. today Call him between 430 & 5 today will be in his office for call"

37. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law office reflecting a call at 5:10 p.m. from Judge Hastings to Borders with the following message: "He'll be waiting for call - Have them get him off the bench He'll also let them know if you call to get him to phone."

42. On September 11, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law offices reflecting a call at 4:20 p.m. from Judge Hastings to William Borders with the message "Flight further delayed; not leaving until 5" .

136. At 11:13 a.m. on October 9, 1981, a person described as "Frank" called William Borders' law office and left a message for Borders to call him.

272. On April 9, 1981, at approximately 10:40 a.m., Judge Hastings called William Borders' office. He left a message for William Borders to call. The message reads: "at office between 12 & 1."

277. A telephone message slip for "WAB" at the office of William Borders states: "At home at 6:30 only time he will be at home."

278. A telephone message slip for "WAB" left at the offices of William A. Borders indicates a telephone call from "Al C Hastings". The message slip is undated.

279. A telephone message slip at the offices of William A. Borders, dated 5/4, reflects an "urgent" call from "Al C. Hastings," the telephone number (305) 350-4289 and the message: "will await call between 12 and 1 from you." The message slip appears on a page of message book which shows calls between 10:00 and 10:20.

286. A telephone message slip left at the offices of William Borders, dated 7/9, at 11:50, for "Bill" from "Al Hastings" bears the following message: "Sat morning Air Fla. #91 at 1045 from Key West Will be departing at 1:00".

IV. Hotel Records

175. On October 9, 1981, Judge Hastings was registered for room 11239 of the L'Enfant Plaza Hotel.

V. Court Decisions

21. On June 19, 1981, a three-judge panel of the United States Court of Appeals for the Fifth Circuit held, in United States v. Martino, No. 78-3611, slip. op. at 8275 (5th Cir. June 19, 1981), that: "Congress did not intend to include in the forfeiture provision of [sec.] 1963 [of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. secs. 1961 et seq.,] the fruits and profits obtained from a pattern of racketeering activity, and reversed in part the district court's forfeiture order which had forfeited insurance proceeds received as a result of arson. The subsequent history of the Martino decision is reported at 648 F.3d 367, vacated in part sub nom., United States v. Holt, 650 F.2d 651 (1981), cert. denied, 456 U.S. 949 (1982), rev'd, 681 F.2d 952 (5th Cir. 1982)(en banc), cert. granted, 459 U.S. 1101 (1983), aff'd sub nom., Russello v. United States, 464 U.S. 16 (1983).

111. On August 27, 1981, the United States Court of Appeals for the Fifth Circuit issued an opinion in the case of United States v. Peacock, 654 F.2d 339 (1981), vacated in part, 686 F.2d 356 (5th Cir. 1982), cert. denied, 464 U.S. 965 (1983). In its August 27, 1981 opinion, the court in Peacock followed the June 19, 1981 decision in Martino.

VI. Record of United States v. Romano

12. Following the conviction of Thomas and Frank Romano, Judge Hastings held hearings on December 30, 1980, and February 20, 1981, to determine whether certain financial interests of the Romanos should be forfeited under RICO.

270. On February 20, 1981, the non-jury trial of the forfeiture issue in the Romano trial was concluded, with ruling reserved.

14. On February 20, 1981, Judge Hastings reserved ruling on the forfeiture in the Romano case, requested that the parties make further submissions and stated that he would schedule the sentencing after he had received the submissions by the parties and the presentence investigation report.

271. By April 8, 1981, the defendants and the government had filed memoranda on the forfeiture issue in the Romano case.

17. On May 4, 1981, Judge Hastings entered an order in the Romano case requiring Thomas and Frank Romano to forfeit a total of $1,162,016 to the United States.

18. On May 11, 1981, Thomas and Frank Romano appeared for

sentencing and their counsel, Neal Sonnett, requested a continuance in order to present additional arguments to the court. Counsel for the United States opposed the continuance on the grounds that five months had passed since the verdict and that the issues raised as grounds for a continance had previously been briefed or raised.

19. On May 11, 1981, Judge Hastings continued the sentencing of Thomas and Frank Romano to a date to be chosen by the parties, subject to the court's schedule.

118. On October 6, 1981, an order reversing the forfeiture of $845,939.00 of the $1,162,016.00 of Thomas and Frank Romano's property which had previously been ordered forfeited was signed by Judge Hastings and mailed out.

VII. Record of United States v. Borders

202. Grand Jury 81-1 (MIA) returned an indictment against William Borders and Judge Hastings on December 29, 1981.

203. Grand Jury 81-1 (MIA) indicted William Borders on four counts. The first count charged Borders with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings' being influenced in the performance of official acts as a federal judge, in violation of 18 U.S.C. sec. 371. The second count charged Borders with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. sec. 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, "Paul Rico," whom he believed to be a defendant in the Romano case. Counts three and four alleged that Borders, in violation of 18 U.S.C. sec. 1952, travelled in interstate commerce with the intent to promote, carry on and facilitate the promotion and carrying on of an unlawful activity, namely a bribery in violation of 18 U.S.C. sec. 201.

214. On March 2, 1982, in United States v. Hastings, NO. 81-596-Cr. ETG (S.D. Fla.), Judge Edward T. Gignoux granted William Borders' m otdion for change of venue of his trial, and ordered his case to be tried in Atlanta, Georgia.

217. The jury in United States v. Borders, (No. CR-82-75-A), convicted Borders on all counts on March 29, 1982.

VIII. Record of United States v. Hastings

204. Grand Jury 81-1 (MIA) indicted Alcee L. Hastings on

two counts. The first count charged Alcee L. Hastings with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings' being influenced in the performance of official acts as a federal judge, in violation of 18 U.S.C. sec. 371. The second count charged Alcee L. Hastings with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. sec. 1503. This count alleged that Alcee L. Hastings had informed Borders of the substance and date of issuance of the forfeiture order that he was preparing and that Borders had passed the information to a third person, "Paul Rico," whom Borders believed to be a defendant in the Romano case.

205. United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), was assigned to Judge Edward T. Gignoux on January 4, 1981, sitting by designation.

207. Pursuant to the January 19, 1982 discovery order in United States v. Hastings, 81-596-Cr. ETG (S.D. Florida), the prosecution produced various documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and William Borders.

208. Pursuant to the January 19, 1982, discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the defense, in mid-February, 1982, filed "Defendant's Reciprocal Discovery Inventory No. 1.

209. No letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings were included in Judge Hastings' production in mid-February, 1982, pursuant to the January 19, 1982 reciprocal discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida).

211. Joel Hirschhorn withdrew as counsel for Judge Hastings on March 2, 1982.

212. On February 1, 1982, Judge Hastings filed a motion in United States v. Alcee L. Hastings, No. 81-596-Cr. ETG (S.D. Florida), to quash his indictment and dismiss the criminal proceedings against him for lack of jurisdiction, in which he argued that a sitting federal judge had to be impeached before a criminal prosecution could proceed.

220. In December 1982, Judge Hastings produced for the prosecution handwritten letters regarding Hemphill Pride, which Judge Hastings testified in United States v. Hastings were drafted on October 5, 1981.

226. In United States v. Hastings, No. 81-596-CR-ETG (S.D. Florida), Judge Hastings' trial defense was conducted by Judge Hastings and Patricia Williams.

IX. Judge Hastings' Trial Testimony

163. Judge Hastings left William Borders' office on October 9, 1981. He walked to a book store, and from there to a clothes store, where he spoke with Brenda Russell, the owner, whose husband was Judge Hastings' friend, and used her telephone.

164. On October 9, 1981, after leaving Brenda Russell's store, Judge Hastings went to two luggage shops, and purchase a leather bag.

165. On October 9, 1981, after leaving William Borders' office and making stops at several shops, Judge Hastings returned to his room at the L'Enfant Plaza Hotel and ordered lunch to be sent up by room service.

166. After Judge Hastings ordered room service at the L'Enfant Plaza Hotel on October 9, 1981, Hemphill Pride came to Judge Hastings' room. Judge Hastings then ordered additional food from room service and the men had lunch together in Judge Hastings' room.

266. Before departing the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings did not check about the availability of flights leaving National Airport.

281. In 1981, Judge Hastings did not know Madeline Petty. He did not meet her until his trial in 1983.

XII. Other Tape Recordings

126. During their October 8, 1981 telephone conversation, beginning at 9:37 a.m., Judge Hastings told Borders that he would be arriving in Washington the next morning at 10:40 on Eastern flight 130.

360. At 8:58 a.m. on September 6, 1985, the FBI recorded an incoming telephone call to Kevin "Waxy" Gordon from Peter Ferguson in which Ferguson is reported to have said that Mayor Clark wanted to meet Gordon at "11:30 a.m. today at the Miami Outboard."

366. In a telephone conversation recorded by the FBI on September 9, 1985, Kevin "Waxy" Gordon told an individual about his meeting with Mayor Clark at the Miami Outboard Club on September 6, 1985, stating that "Steve called me over there to tell me that he heard from Alcee Hasting . . . you know a Federal Judge. There's some rumor that I was involved with . . . ah . .

. Clark, Ferguson and a councilman from Hialeah on some deal . . . "

XIII. FBI Reports

133. On October 9, 1981, Borders and Judge Hastings left the L'Enfant Plaza Hotel and proceeded to William Borders' car. They then went to the Superior Court of the District of Columbia. Thereafter, they went to W & W Liquors, and then to Borders' law office.

145. Following his arrest on October 9, 1981, William Borders telephoned his attorney John Shorter. Mr. Borders then made arrangements for Mr. Shorter to come to the Twin Bridges Marriot Hotel.

146. On Friday, October 9, 1981, attorney John Shorter arrived at the Twin Bridges Marriott Hotel and spoke with William Borders who asked John Shorter to represent him.

XIV. 1985 Wiretap Application and Progress Reports

303. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report on July 22, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the First Progress Report under seal.

304. Assistant U.S. Attorney Martinez presented Judge Hastings with the Second Progress Report on July 29, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the Second Progress Report under seal.

306. Assistant U.S. Attorney Martinez presented Judge Hastings with the Third Progress Report on August 5, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the Third Progress Report under seal.

308. Assistant U.S. Attorney Jon A. May presented Judge Hastings with the Fourth Progress Report on August 12, 1985.

310. Judge Hastings signed and reviewed the Fourth Progress Report on August 13, 1985, and at that time entered an order placing the Fourth Progress Report under seal.

311. Assistant U.S. Attorney John A. May and FBI Case Agent Geoffrey Santini presented Judge Hastings with the Fifth Progress Report, dated August 14, 1985. On August 15, 1985, Judge Hastings reviewed and signed the report and entered an order placing the Fifth Progress Report under seal.

317. On August 15, 1985, Judge Hastings signed the application for a 30 day extension of the wiretap and entered all the necessary orders, including an order placing under seal the documents that had been presented to him by Assistant U.S. Attorney Jon A. May and FBI Case Agent Geoffrey Santini on August 15, 1985.

319. On August 22, 1985, Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report after the extension of the wiretap.

321. On August 22, 1985, Judge Hastings signed the First Progress Report after the extension of the wiretap and at that time entered an order placing the First Progress Report under seal.

322. On August 29, 1985, Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap.

328. On August 29, 1985, Judge Hastings signed the Second Progress Report after the extension of the wiretap and at that time entered an order placing the Second Progress Report under seal.

334. On September 5, 1985, Judge Hastings signed the Third Progress Report after the extension of the wiretap, and at that time entered an order placing the Third Progress Report under seal.

XV. Miscellaneous Proof

58. On September 12, 1981, William Borders had no official connection with the Romano case, nor was he a member of the Florida bar.

76. From March through October 1981, William Borders was a social acquaintance of Madeline Petty.

210. During his representation of Judge Hastings, Joel Hirschhorn, counsel for Judge Hastings from January 12, 1982 to March 2, 1982, never saw any letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings.

292. Peter Ferguson was Mayor Clark's campaign manager for a period of time which included all or part of 1984 and all or part of 1988.

293. Kevin "Waxy" Gordon was the zoning code enforcer for

the city of Surfside, Florida, when the April, 1985, FBI investigation began and during early 1986. Gordon had previously held a position as a code enforcement officer for the city of Miami, Florida.

294. In 1986, Mayor Clark had known Kevin "Waxy" Gordon since the early 1960s.

347. In 1985, the Metropolitan Miami Action Plan ["MMAP"] was an organization designed to diminish the disparity between the black and white communities in the Miami, Florida area, concerning eduction, employment, housing and criminal justice.

351. On September 6, 1985, the breakfast meeting of the MMAP Third Annual Conference was held in the Regency Ballroom of the Hyatt Regency Hotel.

354. On September 6, 1985, during its Third Annual Conference, the MMAP served a continental breakfast at the Hyatt Regency Hotel in the area outside the Regency Ballroom.

374. In February, 1986, Kevin "Waxy" Gordon died after suffering a heart attack.

378. In the May 20, 1986, telephone call with Eric Holder, Judge Hastings declined to be interviewed.

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
F. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8877

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

IMPEACHMENT TRIAL COMMITTEE
DISPOSITION OF PRETRIAL ISSUES
SEVENTH ORDER

At the pretrial conference on June 22, 1989, we heard argument by the parties on Judge Hastings' Motion for Reconsideration and Rescheduling, which had been received by the committee on June 20, 1989. The motion was submitted to the full committee on June 22, 1989, following the chairman and vice chairman's pretrial conference with the parties. The committee voted to deny Judge Hastings' motion to extend the time for filing pretrial statements and the date for beginning evidentiary hearings. The evidentiary hearings on the articles of impeachment against Judge Hastings shall begin as scheduled on July 10, 1989.

Judge Hastings failed to file a pretrial statement on June 21, 1989, as he had been directed to do by the committee on April 21, 1989. On June 9, 1989, the committee had issued a further order governing the contents of each party's pretrial statement, which allowed the parties an additional day, until June 22, 1989, to provide copies of their trial exhibits to the committee. Judge Hastings provided no exhibits to the committee on that date. The committee had informed the parties in its June 9, 1989 order that the listing of witnesses in their pretrial statements would constitute their applications for the issuance of subpoenas. As the record now stands, Judge Hastings is not requesting any trial subpoenas, nor is he proposing to offer any exhibits. Judge Hastings is in default of his obligations to file a pretrial statement and to provide copies of his trial exhibits. He should cure those defaults immediately.

After learning that Judge Hastings had moved to delay the filing of his pretrial statement and to delay the beginning of the committee's evidentiary hearings, the House requested that its pretrial statement be filed in camera and not be provided to Judge Hastings until he complies with his reciprocal obligation to file a pretrial statement. Although the committee appreciates the equities of the House position, the committee has determined that the House's pretrial statement, together with the exhibits that it proposes to offer in evidence, be provided to Judge Hastings' counsel. Under the committee's fifth pretrial order, Judge Hastings must, on or before June 27, 1989, file and serve a statement for each document or item of evidence listed by the House which unequivocally states whether he objects to admission of that document or item without need for formal proof as to its authenticity or genuineness, and where appropriate, its status as a record of a regularly conducted activity or a public record. The order goes on to describe the consequence of the failure to make a reasoned and specific objection to any particular document or item of evidence.

The committee reiterates and affirms the applicability of its fifth order, except that it shall extend from June 27, 1989 to July 3, 1989 the time for Judge Hastings to file his particularized statement about each document or item of evidence that the House has proposed to place in evidence.

The House has made a timely filing of its pretrial statement. We grant the House's application for the issuance of subpoenas to the witnesses listed in its statement. The committee will subsequently issue an order on the House Managers' proposed use of prior testimony. The committee's action on the House proposal will determine whether the attendance of several of the witnesses on the House list will be necessary. The issuance of subpoenas for those witnesses does not constitute a judgment by the committee that their attendance will be necessary.

Jeff Bingaman
Chairman

Arlen Specter
Vice Chairman

June 23, 1989

PRETRIAL FILINGS FOLLOWING THE FINAL PRETRIAL CONFERENCE WITH THE PARTIES

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

AMENDED FINAL PRETRIAL STATEMENT OF THE HOUSE OF REPRESENTATIVES

Pursuant to the First, Second and Fifth Orders of the Impeachment Trial Committee, the House of Representatives hereby submits its Final Pretrial Statement in the above-captioned matter.

I. Statement of the Case

This case involves repeated acts of misconduct by Judge Alcee L. Hastings, United States District Judge for the Southern District of Florida. Based on its investigation, the House of Representatives has charged Judge Hastings with seventeen Articles of Impeachment. Each article rests upon misconduct that warrants removal from the Federal bench.

Article I charges Judge Hastings with knowingly participating in a conspiracy to obtain a bribe from men who were criminal defendants in a case pending before him. Judge Hastings' cohort in the conspiracy was William Borders, a prominent Washington, D.C. attorney who served time in prison for his participation in the scheme. Judge Hastings and William Borders set up a deal in which for $150,000 the judge would reduce to probation the three year prison sentences he had previously imposed on Thomas and Frank Romano.

Unbeknownst to Judge Hastings and William Borders, the Government had learned, through a confidential informant, of the bribery plan. After corroborating the evidence provided by the confidential informant, the Government initiated an undercover operation in which a former FBI agent impersonated one of the criminal defendants, Frank Romano. William Borders approached the undercover operative, and the bribery deal was struck.

Judge Hastings' participation in the scheme is established by numerous actions on his part beginning as early as May of 1981 and continuing through October 9, 1981, the day of William Borders' arrest. Two ready examples of Judge Hastings' participation are the actions he took after William Borders made certain promises to the undercover operative designed to prove that Judge Hastings was "on board." First, William Borders promised that the judge would appear at a restaurant -- which the undercover agent designated -- on a particular day and at a

particular time. Judge Hastings appeared as promised. Second, William Borders and the undercover agent agreed that after the agent made a payment on the bribe, the judge would issue a court order returning a substantial amount of Romano property, which five months earlier the judge had ordered forfeited. A $25,000 down payment was made. Judge Hastings issued the promised order shortly thereafter.

In addition, a web of events -- including telephone calls between Judge Hastings and William Borders and their travel plans -- will demonstrate contact between Judge Hastings and Mr. Borders at times which correlate with key events in the Romano case, a pattern which does not occur on other occasions. And at a critical point in the Romano case, a coded conversation between Judge Hastings and William Borders was recorded.

Further evidence to be presented concerns Judge Hastings' flight from Washington, D.C. after learning of William Borders' arrest. The circumstances of that hurried departure belie Judge Hastings' innocence. Within two hours of the arrest, Judge Hastings was told that Mr. Borders had been arrested, that the arrest had to do with a charge of corruption in Judge Hastings' courtroom, and that the FBI desired to interview the judge that afternoon. Despite the fact that he was given the names and telephone number of the FBI agents to contact, Judge Hastings made no attempt to reach them. Instead he immediately left for Florida. Rather than going to National Airport, which had a flight available and was only four miles from his hotel, Judge Hastings took a $50 cab ride to Baltimore-Washington International Airport. And, instead of flying to Miami, where his car was parked, he deplaned at Ft. Lauderdale, an intermediate stop, and rented a car. The FBI eventually found Judge Hastings at his girlfriend's home late that evening.

Articles II through XV of the Articles of Impeachment focus on Judge Hastings' continued misconduct at the criminal trial in which he was charged with participating in the bribery conspiracy. Each of these articles specifies a separate instance in which the judge knowingly testified falsely under oath when he took the stand in his own defense. In each instance, Judge Hastings sought to mislead the trier of fact about his participation in the scheme with William Borders. His strategy was successful, for the judge was acquitted in the criminal case. The evidence, however, convincingly establishes that Judge Hastings consistently and repeatedly lied under oath.

Articles II through XV are based upon the statements Judge Hastings made under oath in his attempt to explain away the incriminating evidence. For example, Article V charges that Judge Hastings lied under oath when he testified that the reason he appeared at the restaurant designated by the undercover agent was that Mr. Borders had asked him to meet there for dinner. Yet

the evidence clearly establishes that on the designated night Mr. Borders was in Las Vegas for a championship fight, a trip that had been long planned. Moreover, Judge Hastings invited a date to the dinner, made a reservation for only two persons and did not object when two place settings were removed after he and his date were seated at a table for four.

This is only one example of a false statement made under oath by Judge Hastings. Each and every one of the fourteen instances of false testimony charged in the Articles of Impeachment justifies Judge Hastings' removal from the Federal bench.

Article XVI of the Articles of Impeachment charges misconduct wholly independent of the bribery scheme. Two years after his trial on the bribery conspiracy, Judge Hastings divulged confidential information obtained through an authorized Government wiretap. The FBI had initiated an undercover investigation into union corruption at the Miami, Florida docks, which in turn led to an investigation of corrupt zoning practices in Hialeah, Florida. In furtherance of its investigation, the Government had applied to the Court for a wiretap. Judge Hastings had granted the application and had received weekly progress reports that set forth the information of criminal activity obtained by the Government.

Although Judge Hastings had placed under seal the wiretap application and the progress reports, thereby rendering the information confidential, he nonetheless disclosed a critical fact contained in those documents to Dade County Mayor Steve Clark. Judge Hastings warned Mayor Clark to stay away from one of the targets of both FBI investigations, indicating that the target was "hot" and was using the Mayor's name in Hialeah. This disclosure of confidential information undermined both FBI undercover investigations. Judge Hastings' disclosure not only violated his own court order, it also thwarted two important investigations into public corruption and placed FBI undercover agents at risk.

In the final Article of Impeachment, Article XVII, the House of Representatives charges that the totality of Judge Hastings' egregious misconduct warrants his removal from the Federal bench. That misconduct -- Judge Hastings' participation in the bribery deal, his repeated false statements under oath, his fabrication of documentary evidence at his criminal trial, and his divulgence of critical wiretap information -- has undermined the impartiality and integrity of the Federal Judiciary and betrayed the trust of the American people. Judge Hastings' actions, taken separately, justify removal from office. Taken together, the misdeeds unquestionably bring disrepute on the Federal courts and the administration of justice, warranting his removal from the bench.

II. Witnesses

The House of Representatives presently intends to call the following witnesses, in the order listed, in its direct presentation of the case against Judge Alcee L. Hastings.

Martha Rogers. Arent, Fox, Kinter, Plotkin, & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036

Ms. Rogers was the Assistant United States Attorney in Miami, Florida to whom the confidential informant, Mr. William Dredge, first revealed his information concerning the bribery plan of Judge Hastings and William Borders. Ms. Rogers was actively involved in the initial investigation of the conspiracy and will testify about her role in that investigation.

Anticipated length of direct testimony -- 30 minutes

James Deichert. Organized Crime Strike Force, 2002 U.S. Courthouse, 75 Spring Street S.W., Atlanta, GA 30303

Mr. Deichert was the Department of Justice Strike Force attorney who prosecuted United States v. Romano. He will testify as to events in that case, including post-trial motions and orders.

Anticipated length of direct testimony -- one hour

William Dredge. c/o Roger Spaeder, Esq., Zuckerman, Spaeder, Goldstein, Taylor & Kolker, 1201 Conn. Ave., N.W., 12th floor, Washington, D.C. 20038

Mr. Dredge was the confidential informant who disclosed to the Government information about Judge Hastings' and William Borders' bribery schemes. Mr. Dredge will testify regarding his contacts with William Borders, the information he learned regarding the bribery schemes, and his agreement to introduce William Borders to the undercover operative who impersonated Frank Romano.

Anticipated length of direct testimony -- two hours

Neal Sonnett. 200 S.E. 1st Street, Suite 500, Miami, FL 33131

Mr. Sonnett represented Thomas and Frank Romano in post-trial proceedings before Judge Hastings. The House Managers have requested the admission, in lieu of live testimony, of those portions of his prior testimony before the Investigating Committee of the Eleventh Circuit (hereinafter "IC" testimony) which relate to Mr. Sonnett's knowledge of contacts the Romanos received from Philip Moscato, on behalf of a Washington "bigshot," who claimed to have connections with the Romanos' judge.

Anticipated length of direct testimony if prior testimony not accepted -- 20 minutes

Louima Ruth Romano. Address unknown

Mrs. Romano is the widow of Frank Romano, one of the defendants in United States v. Romano. She testified at the IC as to the fact that she received a telephone call from Philip Moscato for her husband while her husband and his brother were in California, in April, 1981, and that she then relayed Moscato's message to Frank Romano. At this time, the House has been unable to locate Mrs. Romano. The House has requested that her prior testimony be admitted, since her testimony is extremely limited and her credibility does not appear to be in issue.

Anticipated length of direct testimony if prior testimony not accepted -- 15 minutes

William Murphy. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Murphy was the FBI agent in charge of the Government's investigation into the bribery conspiracy. He will testify about the investigation, including the corroboration of the information provided by Mr. Dredge, the development of the undercover operation, the execution of the undercover operation, the conduct of Judge Hastings and William Borders during the course of the investigation, and the arrest of William Borders.

Anticipated length of direct testimony -- three hours

H. Paul Rico. Miami Jai Alai, 3500 N.W. 37th Aveneue, 1st Floor, Miami, FL 33142

Mr. Rico is a former FBI agent who impersonated Frank Romano in the undercover operation. The House of Representatives has requested that the Impeachment Trial Committee accept his prior testimony at Judge Hastings' criminal trial. If called to give live testimony before the Committee, Mr. Rico will testify regarding what William Borders wrote down for him during their conversation on September 12, 1981 at the Miami International Airport.

Anticipated length of direct testimony -- 30 minutes

Airline Specialists.

The House of Representatives has requested that the Impeachment Trial Committee accept the IC testimony of three airline specialists. Those specialists are Richard Lowe, Willie James Washington and Laverne Boone.

Mr. Lowe was a supervisor of ticket control and custodian of records for Eastern Airlines. His testimony concerned information contained in Eastern's records for flights for Judge Hastings on or about June 17-18, 1981, July 17-20, 1981, September 11-14, 1981, and October 9, 1981; and for William Borders for flights on or about July 21-22, 1981, and September 11, 1981. Mr. Lowe also testified as to seat availability on Eastern flight 197 on October 9, 1981.

Mr. Washington is a reservation specialist working for Eastern Airlines, who is familiar with that airline's computer reservation record system. His testimony concerned information contained in Eastern's records for William Borders for flights on September 12 and 13, 1981, and for Judge Hastings for flights between September 10, 1981 and September 14, 1981. In addition, Mr. Washington explained the meaning of symbols and other notations in the flight reservation histories for the above described flights.

Ms. Boone is Mr. Lowe's successor at Eastern Airlines. She testified as to airline records reflecting the flight plans of William Borders on May 5, 1981, July 9-10, 1981, and September 12, 1981; William Dredge on May 28-29, 1981; and Judge Hastings on May 5-10, 1981, June 17-18, 1981, July 7, 1981, July 18-22, 1981, and September 10-14, 1981.

Anticipated length of direct testimony if prior testimony not accepted -- 90 minutes

John Doar. Doar, Devorkin & Riek, 10th floor, 233 Broadway, New York, NY

Mr. Doar was the Counsel for the Investigating Committee of the Eleventh Circuit with respect to the investigation of complaints concerning Judge Hastings. He will testify regarding facts pertaining to travel, telephone, and court records.

Anticipated length of direct testimony -- one hour

David Thomas. 1130 Hemlock Circle, Fort Pierce, FL 34950

Mr. Thomas is William Borders' cousin, and an organizer of a family reunion held in Ft. Pierce from September 11 - 13, 1981. He will testify as to when the reunion was planned, and Mr. Borders' arrival and attendance at the reunion.

Anticipated length of direct testimony -- 20 minutes

Donna Myrill Mendez. Queens County Courthouse, 125-01 Queens Blvd., Kew Gardens, NY 11415

Ms. Mendez was a friend and former law clerk of Jesse McCrary, a friend of Judge Hastings and William Borders. She was present in Judge Hastings' room at the Sheraton Hotel in Washington, D.C. on September 12, 1981, and will testify as to the arrival of Mr. Borders.

Anticipated length of direct testimony -- 30 minutes

Pearl Dabreau Mapp. 433 Elm Street, N.W., Washington, D.C. 20001

Ms. Mapp was a social acquaintance of Judge Hastings. She was present in Judge Hastings' room at the Sheraton Hotel in Washington, D.C. on September 12, 1981, and will testify as to the arrival of Mr. Borders.

Anticipated length of direct testimony -- 30 minutes

Essie Thompson. 1101 Riflecrest Avenue, Valrico, FL 33594

Ms. Thompson was a social acquaintance of Judge Hastings in 1981. She accompanied him to the Fountainebleau Hotel on September 16, 1981. She will testify about her conversations with Judge Hastings on September 15 and 16, the making of arrangements for their dinner date, and about the events of the evening of September 16, 1981.

Anticipated length of direct testimony -- 45 minutes

Madeline Petty. 5120 Third Street, N.W., Washington, D.C. 20011

The House Managers have requested that Ms. Petty's prior testimony be accepted into evidence. Ms. Petty was a social acquaintance of Mr. William Borders in 1981. Her testimony relates to the planning of a trip by her and Mr. Borders to Las Vegas for a championship boxing match on September 16, 1981, and the events surrounding that trip. In addition, Ms. Petty would testify about several calls made from Judge Hastings' residence to her home during the time of the alleged conspiracy in 1981.

Anticipated length of direct testimony if prior testimony not accepted -- 45 minutes

Jeffrey Miller. Miller & Beilly, 500 E. Broward Blvd, #1900, Fort Lauderdale, FL 33394

Mr. Miller was the law clerk working for Judge Hastings in 1981 who was assigned to United States v. Romano. He will testify as to his responsibilities with respect to that case and, in particular, the circumstances surrounding the preparation of the October 6, 1981 forfeiture order.

Anticipated length of direct testimony -- 45 minutes

Daniel Simons. London, England

Mr. Simons was a law student working in Judge Hastings' chambers in October, 1981. Because of his unavailability for trial, the House Managers have requested the admission of Mr. Simons' prior testimony before the grand jury. That testimony relates to Mr. Simons' knowledge of circumstances relating to the preparation of the October 6, 1981 order in United States v. Romano. The House Managers have also requested the admission of his prior testimony before the IC which relates to his knowledge of the absence of ex parte communications with William Borders.

Anticipated length of direct testimony -- unavailable for trial

Roger Shuy. 2032 48th Street, N.W., Washington, D.C. 20007

Dr. Shuy is a professor of linguistics at Georgetown University who specializes in conversation analysis. Dr. Shuy is offered as an expert witness and his curriculum vitae is attached hereto as Attachment A. In summary, Dr. Shuy has been a professor of linguistics at Georgetown University for 19 years, has published numerous articles on conversation analysis and has testified as an expert witness in both federal and state courts throughout the country. Dr. Shuy has previously provided testimony before the Senate on conversation analysis; specifically, in the expulsion proceeding of ex-Senator Harrison Williams.

Dr. Shuy will testify about the October 5, 1981 telephone conversation between Judge Hastings and William Borders. He will testify regarding his opinion as to whether or not that conversation is in code, and the analysis he used in reaching his opinion.

Anticipated length of direct testimony -- one hour

Hemphill Pride. 3025 Forrest Drive, Columbia, SC 29204

Mr. Pride was a close friend of Judge Hastings in 1981, and he also knew William Borders very well. Mr. Pride will testify regarding his relationship with Judge Hastings and William Borders, the events of October 9, 1981, matters pertaining to Mr. Pride's reinstatement to the South Carolina Bar, his contacts with Judge Hastings, William Borders and the Government following Judge Hastings' indictment, and his access to particular phones in Columbia, South Carolina.

Anticipated length of direct testimony -- two hours

Dale Bird. Federal Bureau of Investigation, Washington, D.C. Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Bird is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Bird will testify regarding the events that took place on October 9, 1981.

Anticipated length of direct testimony -- 45 minutes

Wendy Loucks. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Ms. Loucks is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Loucks will testify regarding the interview conducted of Patricia Williams on October 9, 1981.

Anticipated length of direct testimony -- 20 minutes

John Simmons. Federal Bureau of Investigation, Atlanta Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Simmons is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent

Simmons will testify regarding the interviews conducted of Judge Hastings' staff on October 9, 1981; the Government's attempt to locate Respondent on October 9, 1981; and the interview he conducted of Judge Hastings that evening.

Anticipated length of direct testimony -- 30 minutes

Albert Blocker. L'Enfant Plaza Hotel, Washington, D.C.

Mr. Blocker is the comptroller at the L'Enfant Plaza Hotel, in charge of all billing records at the hotel. He will testify as to records relating to Judge Hastings' stay at that hotel on October 9, 1981. He will also testify as to the hotel's record keeping systems with respect to long distance telephone calls by hotel guests.

Anticipated length of direct testimony -- 30 minutes

Senora Avery. AT&T, Room 4C, 3201 Germantown Road, Fairfax, VA 22030

Ms. Avery is an employee at AT&T experienced in the Hotel Billing Information System (HOBIS). She will testify as to that system and in particular, the HOBIS records for the L'Enfant Plaza Hotel for October 9, 1981.

Anticipated length of direct testimony -- 30 minutes

Antonio Cantu. U.S. Secret Service, 1310 L St. N.W., Room 800, Washington, D.C. 20005

Mr. Cantu is an expert in the field of ink writing analysis, formerly with the Bureau of Alcohol, Tobacco & Firearms, and now with the Secret Service. Mr. Cantu's qualifications as an expert in this field are set forth in the curriculum vitae attached hereto as Attachment B.

Mr. Cantu authored a forensic report pertaining to the ink analysis of the handwritten letters disclosed to the prosecution in December, 1982 in United States v. Hastings. He will testify as to the contents of that report and related matters.

Anticipated length of direct testimony -- 30 minutes

David Attenburger. Federal Bureau of Investigation, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Attenburger is a forensic expert in the field of document analysis, and a special agent of the FBI. His qualifications as an expert in this field are set forth in the curriculum vitae attached hereto as Attachment C.

Mr. Attenburger was the author of a forensic report pertaining to the impression analysis of the handwritten letters disclosed to the prosecution in December, 1982 in United States v. Hastings. He will testify as to the contents of that report and related matters.

Anticipated length of direct testimony -- 30 minutes

Robert I. Richter. Room JM-640, 500 Indiana Avenue, N.W., Washington, D.C. 20001

Judge Richter was the senior attorney from the Public Integrity Section of the Department of Justice assigned to the investigation and prosecution of Judge Hastings and William Borders. He will testify about the post indictment investigation, the discovery proceedings in United States v. Hastings, and Judge Hastings' criminal trial testimony.

Anticipated length of direct testimony -- one hour

Joel Hirschhorn. 2766 Douglas Road, Miami, FL 33133

Mr. Hirschhorn represented Judge Hastings in his criminal proceedings from shortly after his indictment until March 2, 1982. The House Managers have requested that Mr. Hirschhorn's IC testimony with respect to matters relating to discovery in that case be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Carolyn McIver. 2913 Larkhall Road, Columbia, SC 29223

Ms. McIver was an acquaintance of Judge Hastings. She will testify regarding Hemphill Pride's lack of access to her business telephone and Judge Hastings' trip to Columbia, South Carolina after his indictment.
The House Managers have requested that Ms. McIver's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 30 minutes

Andrew Chisholm. 330 Bradbury Drive, Columbia, SC 29223

Mr. Chisholm was an acquaintance of William Borders. He will testify regarding Hemphill Pride's lack of access to his business telephone.

The House Managers have requested that Mr. Chisholm's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Eleanor Golar-Williams. 1215 McDuffie Avenue, Columbia, SC 29204

Mrs. Golar-Williams is the ex-mother-in-law of Patricia Williams. She will testify regarding her contacts with Ms. Williams and Hemphill Pride's lack of access to her home telephone.

The House Managers have requested that Ms. McIver's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Roberto Martinez. Zuckerman, Spaeder, Taylor & Evans, Suite 1100, 2100 Ponce de Leon, Coral Gables, FL 33134

Mr. Martinez was the Assistant United States Attorney in charge of the investigation which was the subject of the wiretap supervised by Judge Hastings. He applied for authorization for the Title III wiretap and presented subsequent weekly progress reports to the judge. Mr. Martinez will testify about the underlying investigations, the information which he provided to Judge Hastings concerning those investigations, Judge Hastings' comments with regard to certain information obtained during the investigations, and the disclosure of confidential information by Judge Hastings which required the termination of major aspects of the investigations.

Anticipated length of direct testimony -- two hours

Geoffrey Santini. Federal Bureau of Investigation, New Orleans Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Santini is a Special Agent of the FBI, who participated in the investigation which was the subject of the wiretap supervised by Judge Hastings. Agent Santini will testify about the FBI undercover operations, the presentation of the application for an extension of the wiretap, Judge Hastings' comments to him at that time, and the investigation of the disclosure of the confidential information.

Anticipated length of direct testimony -- 45 minutes

Steven Clark. Office of the Mayor, 111 N.W. 1st Street, Suite 230, Miami, FL 33128

Steven Clark is the Mayor of Dade County, Florida. He will testify regarding Judge Hastings' disclosure to him of information at the annual conference of the Metro-Miami Action Plan held on September 6, 1985.

Anticipated length of direct testimony -- one hour

Monsignor Bryan O. Walsh. Catholic Community Services, Central Office, 9401 Biscayne Blvd., Miami Shores, FL 33138-2998

Monsignor Walsh is the President of Catholic Community Services in Miami, Florida. He attended the annual conference of the Metro-Miami Action Plan on September 6, 1985. Monsignor Walsh will testify about events that occurred that morning.

Anticipated length of direct testimony -- 20 minutes

Christopher Mazzella. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

In 1985 and 1986, Mr. Mazzella was an FBI supervisory special agent in the Miami field office of the FBI, supervising investigations of public corruption and labor racketeering. He will testify as to his participation in the undercover operation which was the subject of the wiretap supervised by Judge Hastings. He will also testify about his supervision of the investigation of the disclosure of the confidential information, and the effect of that disclosure upon the undercover operations.

Anticipated length of direct testimony -- two hours

III. Exhibits

A numbered index of exhibits is attached hereto as Attachment D. The index includes citations to United States v.

Hastings and the proceedings before the Eleventh Circuit Investigating Committee for each exhibit which was previously introduced.[1] Documents attached to the House submissions on prior testimony are included in the index. Copies of the exhibits listed in Attachment D will be provided, in exhibit notebooks, to Respondent and to the Committee on June 22, 1989.

IV. Prior Testimony

In its filings dated June 14 and June 15, 1989, the House of Representatives requested that the prior testimony of certain witnesses be admitted into evidence at the outset of the trial and that the Committee make provisional rulings on the admissibility of the prior testimony of certain other witnesses if, because of time constraints, the House Managers were to offer their prior testimony during the course of the trial in lieu of live testimony. Those requests are indicated in the above list of witnesses.

With respect to the prior testimony designated by Judge Hastings, the House Managers have no objection to the admission of the prior testimony of Alvoyd Merritt. However, the House objects to the admission of the entire transcript of the trial proceedings in United States v. Hastings, "not . . . offered to prove the truth of the matter [by Judge Hastings] . . . [but] to prove that accusations made in Articles I through XV were fully presented at that trial and were committed to the jury that acquitted respondent."[2]

As the House has repeatedly stressed, impeachment proceedings are separate and independent from the judicial process.[3] The verdict of a criminal jury is not determinative, for otherwise it would undermine the sole power of the Senate to try all impeachments. In analogous situations, the Senate has recognized this principle and refused to defer to a decision of the courts.[4] Accordingly, the issue of what evidence was presented to the jury is wholly irrelevant.

---

[1] Citation is made to the hearings before the Subcommittee on Criminal Justice of the House Committee on the Judiciary for exhibits which were introduced only during those proceedings.

[2] Statement on Behalf of Respondent Concerning Use of Prior Testimony, June 14, 1989, at 1.

[3] See, for example, Response of the House of Representatives to Respondent's Motion to Dismiss Articles I Through XV, reprinted in S. Doc. 101-4, 101st Congress, 1st Sess., at 107 et. seq.

V. Conduct of Evidentiary Proceedings

The House of Representatives intends to allocate approximately 26 hours to the presentation of its case through direct testimony. The House anticipates no problems in the presentation of their direct case.

VI. Legal Principles

Impeachment is not a criminal proceeding. The House of Representatives recognized this precept when it conducted its impeachment investigation of Judge Hastings. The Senate, in turn, endorsed this fundamental premise when it rejected, by an overwhelming vote, Judge Hastings' Motion to Dismiss based on the doctrine of double jeopardy.

Likewise, criminal conduct is not a prerequisite for impeachment. In the American experience, in numerous instances civil officials have been impeached and removed from office based upon Articles of Impeachment which did not charge a violation of the criminal law.

In this case, the House of Representatives has charged Judge Hastings with 17 articles, resting upon separate and distinct misdeeds each of which warrants removal from public office. Although these various acts of misconduct may also constitute criminal violations, the House has not charged Judge Hastings with any criminal offense. Rather, the House determined that in each instance, Judge Hastings conducted himself in a manner that is fundamentally inconsistent with his position of public trust.

Because impeachment is not a criminal proceeding and criminal misconduct is not charged, the formal elements of proof of criminal offenses do not apply. For example, in Articles II through XV, the House charges Judge Hastings with knowingly testifying falsely under oath fourteen different times at his criminal trial. The House did not allege, nor even mention in the Articles of Impeachment, the crime of perjury. Therefore, the Senate is not bound by the technical elements of proof of this crime, such as materiality.

Likewise, although Article XVI alleges conduct that is prosecutable under federal criminal law, the Senate is not and should not be bound by the elements of proof necessary to establish those criminal violations. Thus, for example, whether or not the Senate concludes that the Respondent intended to obstruct a "pending judicial proceeding," as is required in a criminal prosecution for obstruction of justice, the Senate may conclude that the Respondent's conduct constitutes a "high crime or misdemeanor" within the meaning of the Constitution.[5]

---

[4] Ibid. at 128-131.

Because impeachment is not a criminal proceeding, the criminal standard of proof, "beyond a reasonable doubt," does not necessarily apply. Rather, "the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment."[6]

With these legal principles in mind, the House Managers turn to the individual Articles of Impeachment.

Article I. The first article charges that Judge Hastings and William Borders entered into a corrupt conspiracy. The essence of a conspiracy is a partnership, a combination of two or more persons who join together to accomplish an illicit purpose.

---

[5] All the conduct charged in the Articles of Impeachment does, in fact, violate criminal law standards. For example, the misconduct charged in Article XVI constitutes criminal contempt, in violation of 18 U.S.C. sec. 401. Section 2518(8)(c) of Title III of the federal wiretap law provides that "Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge." The House will prove that the Respondent was aware of a clear and definite court order (his own sealing order) which he willfully disobeyed, thereby satisfying the elements of that criminal law offense.

In addition, the alleged conduct constitutes obstruction of justice in violation of 18 U.S.C. sec. 1503. The elements of that offense are that the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice. The courts have held that the intent required to establish this offense is merely that "the defendant should have reasonably foreseen the natural and probable consequence of the success of his scheme. . . ." United States v. Silverman, 745 F.2d 1386, 1393 (11th Cir. 1984), United States v. Buffalano, 720 F.2d 50 (2d Cir. 1984); United States v. Neiswender, 590 F.2d 1269 (4th Cir. 1978), cert. denied, 441 U.S. 963 (1979). Thus, the element of acting "corruptly" does not require that the violator acted for evil or pecuniary reasons. Here, the proof to be offered by the House will satisfy these elements.

[6] This was the ruling of the Chair (Senator Mathias presiding) when the Senate defeated the motion by Judge Harry Claiborne during his impeachment trial to apply the criminal standard of proof. S. Doc. No. 48, 99th Cong., 2d Sess. 108, 148.

The House charges that Judge Hastings was a knowing participant in such a partnership with William Borders, and the illicit purpose of that partnership was to obtain a bribe from Thomas and Frank Romano.

By its very nature, a conspiracy is characterized by secrecy. Therefore, the existence of a conspiracy may be inferred from circumstances and the conduct of the parties involved. When determining whether a conspiracy existed, it is appropriate to consider the actions and statements of the alleged participants as proof of the partnership and its illicit purpose.

Articles II through XV. These articles charge Judge Hastings with knowingly testifying falsely under oath in an effort to mislead the trier of fact at his criminal trial. The House will prove that in fourteen separate instances, Judge Hastings violated his oath to tell the truth, and that he did so in order to obtain an acquittal. Few actions are more subversive of the legal process than lying on the stand. A judge who has sought to mislead persons engaged in any aspect of the legal process is unfit to remain on the bench.

In his Answer to the Articles of Impeachment, Judge Hastings states that with respect to four of these articles, Articles X through XIII, his testimony was false, but that he believed it was true at the time he made the statements.[7] The House will establish, however that Judge Hastings knowingly testified falsely with respect to these and the other statements alleged in Articles II through XV. Such conduct is inconsistent with holding the office of United States District Judge. The foundation of the judicial system is that persons testifying under oath will tell the truth, the whole truth, and nothing but the truth. If a judge testifies falsely, he sets a standard for candor in his own courtroom which cannot be condoned.

Article XVI. In this article, the House has charged Judge Hastings with leaking confidential information which he learned while acting as a supervisory judge of an authorized Government wiretap. The House will prove that there were court orders, entered by Judge Hastings himself, placing under seal the information contained in the Government's application for the wiretap and the subsequent progress reports. Judge Hastings had knowledge of what was in those documents, and those documents were the sole source of his information. By disclosing that information to Mayor Clark, he sought to place himself above the law, a position incompatible with the duty of all citizens.

Article XVII. The final Article of Impeachment rests upon the totality of Judge Hastings' misconduct. Article XVII calls upon the Senate to look at the pattern of his misbehavior, beginning with the bribery conspiracy in 1981, continuing with false testimony and fabricated evidence submitted at trial in 1983, and culminating in his disclosure of wiretap information in 1985. This article charges that taken as a whole, the pattern of misconduct is such that Judge Hastings is unfit to remain in office.

---

[7] See Answer to Articles of Impeachment at 8.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant

Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

June 23, 1989

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

COMMENT ON BEHALF OF RESPONDENT SUBMITTED PURSUANT TO THE SIXTH PRE-TRIAL ORDER

Without waiving any of his general or specific objections to the stipulations proposed by the House Managers or to the process mandated by the Impeachment Trial Committee, respondent submits the following comments pursuant to the Sixth Order dated June 23, 1989:

1. *The Revised Stipulations: Appendix A to Sixth Order.* Counsel for respondent has appended a copy of Appendix A on which he has interlineated changes or corrections he believes necessary to enhance their accuracy. He requests they be adopted. Respondent reserves the right to object to revised ¶210 on the ground that the information stated was obtained in violation of the attorney-client privilege. Apart from relevance objections, already preserved by the Sixth Order, respondent has no other *evidentiary* objections to the stipulations as revised by the Committee.

2. *Procedure for Use of Stipulations at Trial.* In order to assure that the parties have a proper opportunity to

address and the committee to consider the relevance of specific facts, respondent requests that the burden be placed on the party wishing to rely upon a specific stipulation to request leave to publish the stipulation at such time as the party believes the record is sufficient to enable the committee to assess its relevance and any other concerns its admission as evidence may raise.

Respectfully submitted,

Terence J Anderson

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

June 27, 1989

ONE HUNDRED FIRST CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

2137 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

MAJORITY MEMBERS

JACK BROOKS, TEXAS, CHAIRMAN

ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

MINORITY MEMBERS

HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

June 28, 1989

The Honorable Jeff Bingaman
Chairman
The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

On behalf of the House Managers, I wish to express concern about the ongoing failure of Judge Hastings to abide by the Impeachment Trial Committee's Second and Fifth Orders, requiring the parties to submit by June 21 a Final Pretrial Statement listing the witnesses and the documents which each party intends to offer at trial. To date, Respondent has failed to designate any of the evidence that he intends to introduce in his case in chief. He has also failed to provide reciprocal discovery. Respondent's lack of compliance with the Committee's orders puts the House at significant disadvantage by preventing the House Managers from preparing to meet Respondent's case in advance of trial.

The pretrial process was designed to avoid unfair surprise and to expedite the trial by resolving evidentiary issues prior to trial. These objectives have been thwarted by Respondent's failure to meet the deadlines set out by the Impeachment Trial Committee. The House, therefore, urges the Impeachment Trial Committee to strictly enforce its orders.

Sincerely,

John Bryant PW

John Bryant
House Managers

cc: Terence Anderson
Michael Davidson

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

July 3, 1989

The Honorable Jeff Bingaman
Chairman
The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

Pursuant to the Fifth Order of the Impeachment Trial Committee, I am writing to advise you of changes in the House witness list and of additional exhibits that will be offered by the House in its case in chief.

1. The House proposes to add Cynthia Rogers as a witness in its direct case, to be called after the Airline Experts. Ms. Rogers was William Borders' secretary in 1981 and she will testify about message records kept in that office. The anticipated length of her testimony is twenty minutes. Ms. Rogers' address is 5521 Colorado Avenue, N.W., Apt. 312, Washington, D.C. 20010.

2. The House proposes to call Martha Rogers as its fifth witness rather than as the first witness in its direct case. The House intends to call Ms. Rogers after Louima Romano and before William Murphy.

3. The House proposes to call Judge Robert Richter earlier than presently indicated in the Amended Final Pretrial Statement of the House of Representatives. The House proposes to call Judge Richter after Senora Avery and before Antonio Cantu.

4. The House proposes to add the following exhibits to its Exhibit List:

> No. 210. The copy of the telephone bills for the residence telephone of Judge Hastings, January 1, 1981 through November 30, 1981, actually referred to by Judge Hastings in his testimony at his criminal trial. This exhibit was introduced into evidence at Judge Hastings' criminal trial and was authenticated by stipulation. A new certified copy of these telephone records was obtained by the House and is listed as Exhibit No. 31 on the House of Representatives Exhibit List. The House requests that the original exhibit be added as House Exhibit 210.
>
> No. 211. The copy of telephone bills for the residence telephone of Patricia Williams, January 1, 1981 through October 31, 1981, actually referred to by Judge Hastings in his testimony at his criminal trial. This exhibit was introduced into evidence at Judge Hastings' criminal trial and was authenticated by stipulation. A new certified copy of these telephone records was obtained by the House and is listed as Exhibit No. 137 in the House of Representatives Exhibit List. The House requests that the original exhibit be added as House Exhibit 211.
>
> No. 212. Office Telephone Logs of William Borders, April 27, 1981.
>
> No. 213. Office Telephone Logs of William Borders, April 30, 1981.
>
> No. 214. Office Telephone Logs of William Borders, May 1, 1981.
>
> No. 215. Office Telephone Logs of William Borders, April 5, 1981 through May 7, 1981.
>
> No. 216. Indictment, United States v. Accardo, June 3, 1981.
>
> No. 217. L'Enfant Plaza Hotel, bill no. 16183 of William Borders, October 10, 1981.

A list of these exhibits, which includes a citation to where the exhibit was introduced in a prior proceeding, is enclosed. I ask that this page be added to the end of the previously filed Exhibit List of the House of Representatives. In addition, copies of the exhibits are enclosed.

Sincerely,

John Bryant per AIB

John Bryant
House Managers

cc: Terence Anderson
Michael Davidson

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

STATEMENT ON BEHALF OF RESPONDENT CONCERNING AUTHENTICITY AND GENUINENESS AND, WHERE APPROPRIATE, STATUS OF EXHIBITS LISTED BY THE HOUSE

Except as specifically noted in this statement, respondent stipulates to the authenticity and genuineness and, where appropriate, to their status as business records, of the items described in the *U.S. House of Representatives Exhibit List* as reproduced in the four volume set of *U.S. House of Representatives Exhibits* delivered to counsel for respondent on June 25, 1989.[1] The items to which respondent objects on these grounds are listed below using the exhibit number and description employed by the House managers. The grounds for objecting to authenticity, genuineness, or status are specified immediately following the description. Respondent reserves all other grounds for objection at the evidentiary hearings.

---

[1] Respondent reserves the right to insist that the copy of any document offered be the best available copy and that it be legible in its essential parts. Some of the copies in the exhibits provided to respondent by the House do not satisfy these conditions. Respondent has noted some of the more serious legibility problems below.

As the list shows, respondent will object to all transcripts of recorded conversations on grounds of accuracy and completeness as well as on other grounds. In a proper trial, such transcripts would be admissible, if at all, only as an aid to the jury in listening to the recordings. They would not be permitted as a substitute for listening, and, unlike other documents, the jury would not be permitted to consider such transcripts during its deliberations.[2]

Respondent recognizes that the departure from tradition embodied in the Senate's decision to delegate responsibility for receiving evidence to an Impeachment Trial Committee will require further departures from established practice on this point. In order to avoid the unfairness inherent in permitting jurors to rely upon transcripts prepared at the instance of one party, respondent proposes that the Impeachment Trial Committee direct the official reporter to transcribe all recorded conversations admitted into evidence without reference to transcripts supplied by the parties. Although either party should be free to bring obvious and significant errors to the committee's attention, this procedure will assure that any transcriptions included in the record are neutral in origin and are of the same general quality and accuracy as other portions of the record upon which Senators may rely. Respondent will develop this proposal and the basis for his objections at the hearings. He raises the issue here so that the committee will be aware of the problem.

---

[2] *See e.g., United States v. Carbone*, 798 F.2d 21, 25-26 (1st Cir. 1986) (use of accurate transcript permitted only to assist jurors in listening to tape); *United States v. Slade* 627 F.2d 293, 302 (D.C. Cir.), *cert. denied*, 449 U.S. 1034 (1980) (to the same effect); *see also, United States v. Robinson,* 707 F.2d 872, 876-879 (6th Cir. 1983) (survey of principles applied.)

House Exhibit
List No. Description

1. Large Chart of Chronology of Events.

The House managers have not supplied a copy of this exhibit to respondent. All grounds for objection are reserved.

4. Hearing transcript, United States v. Romano, May 11, 1981.

The copy provided is incomplete and bears extraneous markings. An accurate copy of the original should be produced or its absence explained.

10. Telephone bills for (305) 945-9939, residence telephone of William Dredge (under the name of Howard Schlosser), January 1, 1981 through December 15, 1981.

Significant entries in the copies supplied to respondent are illegible. Respondent will object unless the copies supplied at trial are legible.

15. DEA Report of Investigation, May 18, 1981.

This document has never been authenticated, and does not constitute a business record or public report for purposes of this case.

23. Agreement Letters, September 11, 1981 and October 6, 1981.

The copies supplied to respondent are partly illegible. The best available copy should be supplied. The proffer is incomplete. The October 6, 1981, letter was one of a set of two; there was also a sanitized version prepared for filing in open court. The exhibit is thus incomplete.

38b. Transcript of conversation prepared by Dr. Roger Shuy, September 12, 1981, 8:05 a.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 38a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

43b. Transcript of conversation prepared by Dr. Roger Shuy, September 19, 1981, 9:47 a.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 43a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

44b. FBI transcript of telephone conversation, October 2, 1981, 10:20 a.m. (Rico and unidentified receptionist at Borders's office).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

45b. FBI transcript of telephone conversation, October 2, 1981, 12:29 p.m. (Rico and unidentified receptionist at Borders's office).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

46b. FBI transcript of telephone conversation, October 2, 1981, 2:20 p.m. (Borders and Bob [last name unknown])

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

47b. FBI transcript of telephone conversation, October 2, 1981, 2:49 p.m. (Borders and unidentified receptionist at Borders's office).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

48b. FBI transcript of telephone conversation, October 2, 1981, 3:01 p.m. (Rico and unidentified receptionist at Borders's office).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

49b. FBI transcript of telephone conversation, October 2, 1981, 3:02 p.m. (unidentified receptionist at Borders' office and Borders).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

50b. Transcript of telephone conversation prepared by Dr. Roger Shuy, October 2, 1981, 3:10 p.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 50a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

51b. FBI transcript of telephone conversation, October 2, 1981, 4:50 p.m. (unidentified secretary at Borders' office and unidentified receptionist in Judge Hastings's chambers).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

52b. Transcript of telephone conversation prepared by Dr. Roger Shuy, October 4, 1981, 9:38 a.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 52a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

53b. FBI transcript of telephone conversation, October 5, 1981, 4:22 p.m. (Rico and Borders).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

54b. Transcript of telephone conversation prepared by Dr. Roger Shuy, October 5, 1981, 5:12 p.m. (Judge Hastings and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 54a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

55b. FBI transcript of telephone conversation, October 7, 1981, 10:01 a.m. (Rico and unidentified receptionist at Borders's office).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

56b. Transcript of telephone conversation prepared by Dr. Roger Shuy, October 7, 1981, 12:19 p.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 56a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

57b. FBI transcript of telephone conversation, October 7, 1981, 12:22 p.m. (Borders and unidentified female).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

58b. FBI transcript of telephone conversation, October 7, 1981, 3:14 p.m. (Dredge and Borders).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

59b. FBI transcript of telephone conversation, October 7, 1981, 3:32 p.m. (Dredge and Borders).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

60b. FBI transcript of telephone conversation, October 7, 1981, 7:39 p.m. (Rico and Borders).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

61b. Transcript of telephone conversation prepared by Dr. Roger Shuy, October 8, 1981, 9:37 a.m. (Borders and Judge Hastings).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 61a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

62b. FBI transcript of telephone conversation, October 9, 1981, 11:08 a.m. (Rico and unidentified receptionist at Borders's office).

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

64b. Transcript of telephone conversation prepared by Dr. Roger Shuy, October 9, 1981, 11:46 a.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 64a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

65b. Transcript of conversation prepared by Dr. Roger Shuy, October 9, 1981, 12:15 p.m. (Rico and Borders).

Respondent stipulates that this transcript was prepared by Dr. Shuy based upon the tape recording marked House Exhibit No. 65a. Respondent will object to its admission on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

66. FBI Arrest Log, October 9, 1981.

Respondent does not accept FBI logs as business records or public reports and will object to their admission as improper hearsay.

67. Appointment Book of William Borders, March 30, 1981 through April 5, 1981.

What is now marked House Exhibit No. 67 was first produced at the House subcommittee hearings. It has not, in respondent's view, been adequately authenticated. It is also incomplete. Respondent will object to its admission on these and other grounds.

120. Draft of October 6, 1981 Order, United States v. Romano.

House Exhibit 120 is false and misleading. It is not a copy of a "Draft of October 6, 1981 Order." It is a copy of the final order entered by Judge Hastings on October 6, 1981. Almost five years after the fact, on July 9, 1986, Circuit Judge Gerald Bard Tjoflat, a member of the Investigating Committee, marked a copy of that order with a yellow highlighter and a pencil to facilitate his examination of Jeffrey Miller. *See* XXVII Investigating Committee Transcript at 150-51 (description of process by Judge Tjoflat), 172-73 (submission of Judge Tjoflat's marked copy by Mr. Doar). It is the final order as marked by Judge Tjoflat that the House proposes to offer. Respondent objects to the authenticity and genuineness of this document.

Respondent can understand how the six managers aided by their four special counsel and staff of clerks and paralegals might make a mistake such as this. He trusts that the presence of this mistake will, however, inform the Senate's understanding when it considers the evidence concerning the four admitted mistakes respondent and his trial counsel made in the heat of his 1983 trial, the mistakes the House used as the foundation for Articles X through XIII.

123. Large Chart of Transcript of telephone conversation, October 5, 1981, 5:12 p.m. (Judge Hastings and Borders).

The House managers have not supplied a copy of this exhibit to respondent. All grounds for objection are reserved.

124. Large Chart of Transcript of telephone conversation, October 8, 1981, 9:37 a.m. (Judge Hastings and Borders).

The House managers have not supplied a copy of this exhibit to respondent. All grounds for objection are reserved.

128. Transcript of telephone conversation, March 11, 1982, (Hemphill Pride and Judge Hastings).

Where is the tape? Both the tape and the transcript were withheld from respondent at trial. Insofar as respondent can determine, no copy of the tape has been supplied by the House in discovery. Respondent has no way of assessing the authenticity or genuineness of this document and reserves the right to object on that ground. Respondent also reserves the right to object to the admission of this transcript on grounds of accuracy or completeness after the tape has been produced.

129. FBI Surveillance Log, October 9, 1981.

Respondent does not accept FBI surveillance logs as business records or public reports and will object to their admission as improper hearsay.

139. Memorandum from Special Agent John J. Simmons, Jr. to Special Agent in Charge, November 25, 1981.

Respondent does not accept FBI memoranda as business records or public reports and will object to their admission as improper hearsay.

141. Chart enlarging first Hobis slip, October 9, 1981.

The House managers have not supplied a copy of this exhibit to respondent. All grounds for objection are reserved.

145. ATF Report to FBI of Laboratory Examination, December 13, 1982.

Respondent does not accept this report as a business record or public report.

147. FBI Laboratory Report, December 10, 1982.

Respondent does not accept this report as a business record or public report.

175b. Misc. No. 412-Hastings, Redacted (for Southern Bell) Order Authorizing Interception of Wire Communications, August 15, 1985.

A copy of an unrelated transcript from proceedings before the Investigating Committee was included as part of this exhibit in the set delivered to respondent. He objects to any use of this transcript.

185b. Transcript of conversation, September 6, 1985, 8:58 a.m.

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

186b. Transcript of conversation, September 9, 1985, 9:23 a.m.

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

187b. Transcript of relevant portion of conversation, September 9, 1985, 11:04 a.m.

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

190. Floor Plan of Hyatt Regency Hotel, Miami, Florida.

Respondent has requested that a floor plan for the three levels of the Hyatt be subpoenaed for use at these hearings. If such a floor plan is produced, respondent will request it be substituted as the best available evidence and a more fully accurate reproduction. Otherwise, he will not object to the House exhibit.

192. FBI Polygraph Examination Report, March 12, 1986.

The House must be kidding! This document was presented without authentication at the hearings before the House subcommittee. Counsel for respondent promptly submitted a proffer demonstrating the inadequacies of the report and the questions it raised. *Impeachment Inquiry*, App. III at 290-93. The House subcommittee did not call the author of the report or expose his records to review by respondent. Respondent objects on grounds of authenticity, genuineness, and status as well as on the substantial grounds concerning the use of evidence based upon polygraph examinations.

193b. Transcript of relevant portion of conversation, December 18, 1985, 12:09 p.m.

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

194b. Transcript of conversation, January 17, 1986.

Respondent will object to the admission of this transcript on the ground that it is inaccurate and incomplete as well as upon other grounds unrelated to authenticity and genuineness.

201. FBI 302 and attached drawing of the Third Floor of the United States Courthouse, Miami, Florida, 1981, March 26, 1986.

Respondent does not accept FBI 302 memoranda as business records or public reports in relation to this trial and will object to their admission as improper hearsay.

202. FBI 302, March 26, 1986.

Respondent does not accept FBI 302 memoranda as business records or public reports in relation to this trial and will object to their admission as improper hearsay.

203. List of Identified Telephone Numbers prepared by Eleventh Circuit Investigating Committee.

Respondent does not accept this list as a business record or public report.

206. FBI Surveillance Log, July 21, 1981.

Respondent does not accept FBI surveillance logs as business records or public reports and will object to their admission as improper hearsay.

207. FBI Surveillance Log, August 21, 1981.

Respondent does not accept FBI surveillance logs as business records or public reports and will object to their admission as improper hearsay.

208. FBI Surveillance Log, August 22, 1981.

Respondent does not accept FBI surveillance logs as business records or public reports and will object to their admission as improper hearsay.

209. FBI Surveillance Log, September 12, 1981.

Respondent does not accept FBI surveillance logs as business records or public reports and will object to their admission as improper hearsay.

Respectfully submitted,

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

July 3, 1989

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

RESPONSE OF THE HOUSE MANAGERS TO RESPONDENT'S STATEMENT CONCERNING AUTHENTICITY AND GENUINENESS OF HOUSE EXHIBIT 120

With respect to House Exhibit 120, Respondent is correct that the draft of the Order of October 6, 1981 (IC 255a) which was previously submitted is not a copy of the draft prepared by Jeffrey Miller. The correct copy, from IC 451, pp. 007046 - 007057, is attached hereto, and will be placed in the Exhibit books being prepared for the Impeachment trial Committee. A corrected House Exhibit list page 17, wherein Exhibit 120 is listed, is also attached hereto.

Respectfully submitted,

The United States
House of Representatives

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar

Hamilton Fish, Jr.
George W. Gekas

John Bryant

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

July 5, 1989

MAJORITY MEMBERS
JACK BROOKS, TEXAS, CHAIRMAN
ROBERT W. KASTENMEIER, WISCONSIN
DON EDWARDS, CALIFORNIA
JOHN CONYERS, JR., MICHIGAN
ROMANO L. MAZZOLI, KENTUCKY
WILLIAM J. HUGHES, NEW JERSEY
MIKE SYNAR, OKLAHOMA
PATRICIA SCHROEDER, COLORADO
DAN GLICKMAN, KANSAS
BARNEY FRANK, MASSACHUSETTS
GEO. W. CROCKETT, JR., MICHIGAN
CHARLES E. SCHUMER, NEW YORK
BRUCE A. MORRISON, CONNECTICUT
EDWARD F. FEIGHAN, OHIO
LAWRENCE J. SMITH, FLORIDA
HOWARD L. BERMAN, CALIFORNIA
RICK BOUCHER, VIRGINIA
HARLEY O. STAGGERS, JR., WEST VIRGINIA
JOHN BRYANT, TEXAS
BENJAMIN L. CARDIN, MARYLAND
GEORGE E. SANGMEISTER, ILLINOIS

ONE HUNDRED FIRST CONGRESS
Congreſs of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2137 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6216

MINORITY MEMBERS
HAMILTON FISH, JR., NEW YORK
CARLOS J. MOORHEAD, CALIFORNIA
HENRY J. HYDE, ILLINOIS
F. JAMES SENSENBRENNER, JR., WISCONSIN
BILL McCOLLUM, FLORIDA
GEORGE W. GEKAS, PENNSYLVANIA
MICHAEL DeWINE, OHIO
WILLIAM E. DANNEMEYER, CALIFORNIA
HOWARD COBLE, NORTH CAROLINA
D. FRENCH SLAUGHTER, JR., VIRGINIA
LAMAR S. SMITH, TEXAS
LARKIN I. SMITH, MISSISSIPPI
CHUCK DOUGLAS, NEW HAMPSHIRE
CRAIG T. JAMES, FLORIDA

MAJORITY—225-3951
MINORITY—225-6906

July 3, 1989

The Honorable Jeff Bingaman
Chairman
The Honorable Arlen Specter
Vice Chairman
Impeachment Trial Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Mr. Vice Chairman:

In connection with our preparation for trial, it has come to our attention that there is a factual error in stipulation number 64. That stipulation now reads:

> "On September 12, 13 and 14, 1981, a family reunion involving the family of William Borders was scheduled in Ft. Pierce, Florida."

The correct dates for that reunion are September 11, 12 and 13, 1981. Mr. David Thomas, who appeared for the defendant in U.S. v. Hastings, testified as to the correct dates (page 1557, attached hereto) and is expected to again so testify at the impeachment proceedings.

Very truly yours,

Alan I. Baron
Special Counsel

AIB:mjp

Attachment

cc: Terence Anderson
    Michael Davidson

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA

ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. KLUGHEIT, COUNSEL
BRUCE O. McBARNETTE, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT
ISABEL T. McVEIGH, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8577

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

VIA HAND DELIVERY

July 6, 1989

Professor Terence J. Anderson
c/o Karr, Lyons & McLain
1001 Connecticut Avenue, N.W.
Ninth Floor
Washington, DC 20036

Alan I. Baron
Special Counsel
House of Representatives
Committee on the Judiciary
2137 Rayburn House Office Building
Washington, DC 20515-6216

Dear Professor Anderson and Mr. Baron,

Enclosed please find the revised stipulations of fact. The document, entitled Matters Which May Be Treated As Evidence of Fact, reflects a change in stipulation number 64 suggested by the House in a letter dated July 3, 1989. Specifically, the change reflects the correct dates of Borders' family reunion as September 11, 12 and 13, 1981. Stipulation number 64 previously used the dates September 12, 13 and 14, 1981.

Please feel free to contact me with and questions or concerns you may have.

Sincerely,

Elaine W. Stone

Elaine W. Stone
Counsel

MATTERS WHICH MAY BE TREATED AS EVIDENCE OF FACT

2. William Borders participated in Judge Hastings' federal investiture ceremony.

3. In 1981, William Borders was an attorney practicing in Washington D.C.

4. As of January 1981, Judge Hastings and William Borders had known each other for eleven or twelve years.

5. As of January 1981, Judge Hastings and William Borders had a long standing personal and professional relationship, stemming, in part, from their active roles in the National Bar Association, an association of black attorneys.

6. The criminal case of United States v. Romano, Crim. No. 78-364, was assigned to Judge Hastings on October 24, 1979.

7. The Romano case was based on a 21-count indictment of two brothers, Thomas and Frank Romano. The charges against the defendants included conducting an enterprise through a pattern of racketeering activity, investing racketeering income in a legitimate enterprise, theft and embezzlement from an employees benefit plan, wire fraud, mail fraud and income tax evasion. The charges were brought under the Racketeer Influenced and Corrupt Organizations statute ["RICO"] which required, under certain circumstances, the forfeiture of property illegally obtained.

8. In December 1980, Thomas and Frank Romano were tried and convicted by a jury with Judge Hastings presiding.

11. Thomas and Frank Romano waived their right to a jury on the forfeiture matter.

12. Following the conviction of Thomas and Frank Romano, Judge Hastings held hearings on December 30, 1980, and February 20, 1981, to determine whether certain financial interests of the Romanos should be forfeited under RICO.

13. On February 17, 1981, Neal Sonnett entered his appearance on behalf of Thomas and Frank Romano as additional counsel in the case then pending before Judge Hastings.

14. On February 20, 1981, Judge Hastings reserved ruling on the forfeiture in the Romano case, requested that the parties make further submissions and stated that he would schedule the sentencing after he had received the submissions by the parties and the presentence investigation report.

15. On April 23, 1981, one of Judge Hastings' law clerks, Jeffrey Miller, informed James Deichert, the Assistant United

States Attorney in the Romano case, that the sentencing in the Romano case would be held on May 11, 1981.

16. On April 28, 1981, a Notice of Sentencing was filed in the Romano case, scheduling the sentencing for May 11, 1981 at 1:00 p.m.

17. On May 4, 1981, Judge Hastings entered an order in the Romano case requiring Thomas and Frank Romano to forfeit a total of $1,162,016 to the United States.

18. On May 11, 1981, Thomas and Frank Romano appeared for sentencing and their counsel, Neal Sonnett, requested a continuance in order to present additional arguments to the court. Counsel for the United States opposed the continuance on the grounds that five months had passed since the verdict and that the issues raised as grounds for a continance had previously been briefed or raised.

19. On May 11, 1981, Judge Hastings continued the sentencing of Thomas and Frank Romano to a date to be chosen by the parties, subject to the court's schedule.

20. On June 5, 1981, Thomas and Frank Romano filed a motion for reconsideration of the May 4, 1981, forfeiture order issued by Judge Hastings.

21. On June 19, 1981, a three-judge panel of the United States Court of Appeals for the Fifth Circuit held, in United States v. Martino, No. 78-3611, slip. op. at 8275 (5th Cir. June 19, 1981), that: "Congress did not intend to include in the forfeiture provision of [sec.] 1963 [of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. secs. 1961 et seq.,] the fruits and profits obtained from a pattern of racketeering activity, and reversed in part the district court's forfeiture order which had forfeited insurance proceeds received as a result of arson. The subsequent history of the Martino decision is reported at 648 F.3d 367, vacated in part sub nom., United States v. Holt, 650 F.2d 651 (1981), cert. denied, 456 U.S. 949 (1982), rev'd, 681 F.2d 952 (5th Cir. 1982)(en banc), cert. granted, 459 U.S. 1101 (1983), aff'd sub nom., Russello v. United States, 464 U.S. 16 (1983).

24. At the July 8, 1981 sentencing hearing, Judge Hastings confirmed his May 4, 1981 forfeiture order, stating "I will allow the forfeitures as previously set out by the Court to be maintained, and . . . a brief order will be prepared that will recite the reasoning of the Court, at least insofar as the new matters that have arisen, more specifically the cases cited by counsel up to this time."

25. On July 8, 1981, Judge Hastings sentenced each of the Romanos to three years imprisonment to be followed by a three-year period of probation and advised them of their rights to appeal.

26. The sentences imposed on Thomas and Frank Romano on July 8, 1981 were consistent with the recommendations of the United States Probation Office.

27. On July 14, 1981, Thomas and Frank Romano filed notices of appeal from the final judgment and order of conviction, and from the judgment of forfeiture issued from the bench on July 8, 1981.

31. The FBI arranged for H. Paul Rico, a retired FBI agent, to impersonate Frank Romano.

33. From March through October 1981, Cynthia Rogers was a secretary and receptionist at the law offices of William Borders.

34. On Thursday, September 10, 1981, Cynthia Rogers recorded the following reservation for William Borders for travel from Washington to Miami to West Palm Beach to Washington:
Fri. - Air Fla. #131: 7:30 - 9:45.
Sat. - Eastern #890: 9:25 - 9:51 a.m.
Sun. - Delta - West Palm #608: 7:00 a.m. - 9:49 - Atlanta.
11:20 arrive Nat.
125
46
149 $320

35. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' office reflecting a call at 9:35 a.m. from Judge Hastings to William Borders with the message "not coming to D C. today Call him between 430 & 5 today will be in his office for call"

36. On September 10, 1981, at 4:40 p.m., a call, lasting one minute or less, was placed from William Borders' law office to Judge Hastings' chambers.

37. On September 10, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law office reflecting a call at 5:10 p.m. from Judge Hastings to Borders with the following message: "He'll be waiting for call - Have them get him off the bench He'll also let them know if you call to get him to phone."

38. On September 10, 1981, at 5:34 p.m., a call, lasting four minutes, was placed from William Borders' law office to Judge Hastings' chambers.

39. On September 11, 1981, Judge Hastings was scheduled to leave Miami International Airport at 3:48 p.m. and arrive in Washington, D.C. at 6:00 p.m.

40. On September 11, 1981, Judge Hastings' flight was delayed and he actually left Miami International Airport at 5:50 p.m. and arrived at Washington National Airport at 8:04 p.m.

41. On September 11, 1981, two calls were made from the Miami International Airport to the office of William Borders. These calls were charged to Judge Hastings' residence phone.

42. On September 11, 1981, Cynthia Rogers made an entry in the telephone log at William Borders' law offices reflecting a call at 4:20 p.m. from Judge Hastings to William Borders with the message "Flight further delayed; not leaving until 5".

43. On September 11, 1981 William Borders was scheduled to leave Washington National Airport for Miami, Florida at 7:30 p.m. on Air Florida flight 131.

44. On September 11, 1981, William Borders did not take Air Florida flight 131 for which he had reservations and instead departed from Washington National Airport on Eastern Airlines flight 459 which was scheduled to depart at 9:20 p.m.

45. On September 12, 1981, William Borders arrived in Miami, Florida at 1:30 a.m. via Eastern Airlines flight 655 from Atlanta.

46. On September 11, 1981, Judge Hastings registered at the Sheraton-Washington Hotel in Washington, D.C. at 10:14 p.m.

58. On September 12, 1981, William Borders had no official connection with the Romano case, nor was he a member of the Florida bar.

60. On September 12, 1981, at approximately 11:00 a.m., as part of an FBI surveillance, William Borders was observed boarding Eastern Airlines flight 890, departing from Miami, Florida for West Palm Beach, Florida.

61. During the morning of September 12, 1981, William Borders arrived at West Palm Beach, Florida.

62. On September 12, 1981, David L. Thomas, a cousin of William Borders, met Borders at the West Palm Beach airport.

63. On September 12, 1981, David L. Thomas drove William Borders from West Palm Beach, Florida to Fort Pierce, Florida.

64. On September 11, 12 and 13, 1981, a family reunion involving the family of William Borders was scheduled in Fort Pierce, Florida.

66. The drive by David L. Thomas and William Borders from West Palm Beach, Florida to Fort Pierce, Florida on September 12, 1981, took about an hour and twenty minutes.

71. On September 12, 1981, William Borders flew from Orlando, Florida to Baltimore-Washington International Airport on Eastern Airlines flight 664.

72. On September 12, 1981, Eastern Airlines flight number 664 arrived at the gate at Baltimore-Washington International Airport at 8:58 p.m.

73. On September 12, 1981, Judge Hastings was registered at the Sheraton-Washington Hotel, room 7022.

74. On September 12, 1981, Jessie McCrary, a Florida attorney, was registered at the Sheraton-Washington Hotel, room 7024, the room next to Judge Hastings.

76. From March through October 1981, William Borders was a social acquaintance of Madeline Petty.

77. On September 15, 1981, William Borders and Madeline Petty flew from Washington, D.C. to Las Vegas, Nevada.

78. The purpose of the September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, was to attend the Sugar Ray Leonard - Tommy Hearns championship fight.

79. The September 15-18, 1981, trip to Las Vegas, Nevada, by William Borders and Madeline Petty, had been planned since at least September 1, 1981.

80. William Borders did not ask Madeline Petty to keep secret the fact that they were planning to attend the championship fight in Las Vegas, Nevada on September 16, 1981.

86. At some time prior to 7:45 p.m. on September 16, 1981, Judge Hastings made reservations for two for dinner at the Fontainebleau Hotel main dining room on September 16, 1981.

89. On September 16, 1981, at the Fontainebleau Hotel, Judge Hastings did not have William Borders paged.

90. On September 18, 1981, William Borders and Madeline Petty flew from Las Vegas, Nevada to Washington National Airport. Borders did not leave the Washington National Airport and he

departed at 9:20 p.m. for Miami, Florida, via Eastern Airlines flights 459 and 655.

91. On September 19, 1981, William Borders registered at the Miami International Airport Hotel at 2:25 a.m.

99. On September 19, 1981, William Borders left Miami, Florida, for Washington, D.C. on Eastern Airlines flight 190, scheduled to depart the Miami International Airport at 10:55 a.m.

101. On October 2, 1981, H. Paul Rico made four calls to William Borders' law offices, all of which were recorded pursuant to federal wiretap authorization.

103. On Friday, October 2, 1981, at approximately 3:00 p.m. William Borders was out of his law office but he arranged to have "Frank's" (H. Paul Rico's) call put through to him at another office.

107. On October 2, 1981, at 4:50 p.m., William Border's secretary called Judge Hastings' chambers and was told that the judge had left for the day. The call was recorded pursuant to a federal wiretap authorization.

109. On the afternoon of October 4, 1981, William Borders called Judge Hastings' home.

111. On August 27, 1981, the United States Court of Appeals for the Fifth Circuit issued an opinion in the case of United States v. Peacock, 654 F.2d 339 (1981), vacated in part, 686 F.2d 356 (5th Cir. 1982), cert. denied, 464 U.S. 965 (1983). In its August 27, 1981 opinion, the court in Peacock followed the June 19, 1981 decision in Martino.

115. On October 5, 1981, at 4:22 p.m., William Borders and H. Paul Rico spoke to each other by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

117. On October 5, 1981, at 5:12 p.m., William Borders and Judge Hastings had a telephone conversation, which was recorded pursuant to a federal wiretap authorization.

118. On October 6, 1981, an order reversing the forfeiture of $845,939.00 of the $1,162,016.00 of Thomas and Frank Romano's property which had previously been ordered forfeited was signed by Judge Hastings and mailed out.

121. On October 7, 1981, at 12:19 p.m., William Borders and H. Paul Rico spoke by telephone, and the conversation was recorded pursuant to a federal wiretap authorization.

123. On October 7, 1981, at 7:39 p.m., William Borders and H. Paul Rico spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

125. On October 8, 1981, at 9:37 a.m., William Borders and Judge Hastings spoke by telephone and the conversation was recorded pursuant to a federal wiretap authorization.

126. During their October 8, 1981 telephone conversation, beginning at 9:37 a.m., Judge Hastings told Borders that he would be arriving in Washington the next morning at 10:40 on Eastern flight 130.

127. In the late summer of 1981, the National Bar Association planned a testimonial dinner/boat ride in honor of William Borders, the immediate past president of the organization.

128. Judge Hastings was a co-sponsor of the testimonial dinner/boat ride organized by the National Bar Association in honor of William Borders.

129. The National Bar Association dinner/boat ride in honor of William Borders was scheduled for October 9, 1981.

130. On October 9, 1981, at approximately 10:40 a.m., William Borders met Judge Hastings at gate 20 of the Washington National Airport.

131. After picking up Judge Hastings at the Washington National Airport on the morning of October 9, 1981, William Borders drove with Judge Hastings to the L'Enfant Plaza Hotel, arriving at approximately 10:50 a.m.

132. A suite and an adjoining room at the L'Enfant Plaza Hotel had been reserved for William Borders and Judge Hastings, respectively, beginning October 9, 1981.

133. On October 9, 1981, Borders and Judge Hastings left the L'Enfant Plaza Hotel and proceeded to William Borders' car. They then went to the Superior Court of the District of Columbia. Thereafter, they went to W & W Liquors, and then to Borders' law office.

136. At 11:13 a.m. on October 9, 1981, a person described as "Frank" called William Borders' law office and left a message for Borders to call him.

142. On October 9, 1981, when William Borders and H. Paul Rico got into Borders' car, Rico placed a bag containing $125,000 on the seat between them.

145. Following his arrest on October 9, 1981, William Borders telephoned his attorney John Shorter. Mr. Borders then made arrangements for Mr. Shorter to come to the Twin Bridges Marriott Hotel.

146. On Friday, October 9, 1981, attorney John Shorter arrived at the Twin Bridges Marriott Hotel and spoke with William Borders who asked John Shorter to represent him.

150. Agents of the FBI conducted interviews on October 9, 1981 of persons working in Judge Hastings' Miami and Fort Lauderdale chambers, including Marilyn Carter, Joann Tyson, Barbara Katzen, Daniel Simons, Jeffrey Miller and Alan Ehrlich.

151. In October, 1981, Patricia Williams was an attorney employed by the Equal Employment Opportunity Commission in Miami, Florida, and the fiance of Judge Hastings. She resided at 2401 N.W. 43rd Terrace, Lauderhill, Florida.

156. On October 9, 1981, the following attorneys had offices at 1621 New Hampshire Ave., N.W., Washington, D.C.: William Borders, Dudley Williams, James Cobb and Robert L. Bell.

163. Judge Hastings left William Borders' office on October 9, 1981. He walked to a book store, and from there to a clothes store, where he spoke with Brenda Russell, the owner, whose husband was Judge Hastings' friend, and used her telephone.

164. On October 9, 1981, after leaving Brenda Russell's store, Judge Hastings went to two luggage shops, and purchased a leather bag.

165. On October 9, 1981, after leaving William Borders' office and making stops at several shops, Judge Hastings returned to his room at the L'Enfant Plaza Hotel and ordered lunch to be sent up by room service.

166. After Judge Hastings ordered room service at the L'Enfant Plaza Hotel on October 9, 1981, Hemphill Pride came to Judge Hastings' room. Judge Hastings then ordered additional food from room service and the men had lunch together in Judge Hastings' room.

167. After arriving at the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings sent his suit to the hotel valet service.

168. Judge Hastings left the L'Enfant Plaza Hotel for Florida on October 9, 1981 without picking up his suit from the hotel valet service.

175. On October 9, 1981, Judge Hastings was registered for room 11239 of the L'Enfant Plaza Hotel.

181. On October 9, 1981, there was a 4:35 p.m. direct flight to Miami, Florida, leaving from Washington National Airport, with 14 seats available.

182. Washington National Airport is approximately four miles from the L'Enfant Plaza Hotel.

183. On October 9, 1981, Judge Hastings' car was parked at the Miami International Airport.

184. On October 9, 1981, Judge Hastings took a taxi, at a cost of fifty dollars, to Baltimore-Washington International Airport, from the L'Enfant Plaza Hotel in Washington, D.C.

186. On October 9, 1981, at 4:37 p.m., Judge Hastings called his mother from a pay telephone at Baltimore-Washington International Airport and spoke for four minutes. He placed another call to her at 4:43 p.m. and spoke for two minutes.

187. On October 9, 1981, at 5:06 p.m., Judge Hastings called Patricia Williams at her home in Lauderhill, Florida from a pay telephone at Baltimore-Washington International Airport and spoke for one minute.

188. During the 5:06 p.m. telephone call on October 9, 1981, from the Baltimore-Washington International Airport, Judge Hastings told Patricia Williams to call him back at a different pay telephone.

189. When Patricia Williams called Judge Hastings back at 5:07 p.m., on October 9, 1981, at the Baltimore-Washington International Airport, Judge Hastings told her to go outside, find a pay telephone and call him back.

190. On October 9, 1981, at 5:22 p.m., Patricia Williams called Judge Hastings at a pay telephone at the Baltimore-Washington International Airport from a pay telephone from a location other than her home in Lauderhill, Florida.

191. After Patricia Williams called him at the Baltimore-Washington International Airport at 5:22 p.m. on October 9, 1981, Judge Hastings took her number, moved to another pay telephone at Baltimore-Washington International Airport and, at 5:24 p.m., called Ms. Williams at her pay telephone.

192. On Friday, October 9, 1981, at 5:31 p.m. Judge Hastings made a reservation to go to Fort Lauderdale, Florida on Delta Airlines flight 237 departing at 6:30 p.m. That flight was scheduled to continue on to Miami from Fort Lauderdale.

193. There is a handwritten notation on Judge Hastings' ticket for Delta flight 237 on October 9, 1981, crossing out Fort Lauderdale as his destination and substituting Miami as the final destination.

194. On October 9, 1981, Judge Hastings disembarked at Fort Lauderdale from Delta flight 237, which was scheduled to arrive at 8:38 p.m.

195. On October 9, 1981, Judge Hastings rented a car when he arrived at the Fort Lauderdale airport.

196. Prior to being interviewed by the FBI on October 9, 1981 in Lauderhill, Florida, Judge Hastings had not contacted anyone in the FBI that day.

198. On October 9, 1981, Mildred Hastings lived with her son, Alcee L. Hastings, at 2970 N.W. 55th Ave., Apt. 1-B, Lauderhill, Florida. Two telephone numbers were provided to that residence. Telephone number (305) 486-0733 belonged to Mildred Hastings, and telephone number (305) 731-8176 was used by Judge Hastings.

201. On Monday, October 12, 1981, at 6:38 p.m., a telephone call was made from Judge Hastings' home telephone number to William Borders' home telephone number. The call lasted between 1 and 2 minutes.

202. Grand Jury 81-1 (MIA) returned an indictment against William Borders and Judge Hastings on December 29, 1981.

203. Grand Jury 81-1 (MIA) indicted William Borders on four counts. The first count charged Borders with conspiring to solicit a sum of money from criminal defendants in return for Alcee L. Hastings' being influenced in the performance of official acts as a federal judge, in violation of 18 U.S.C. sec. 371. The second count charged Borders with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. sec. 1503. This count alleged that Judge Hastings had informed Borders of the substance and date of issuance of the forfeiture order he was preparing and that Borders had passed the information to a person, "Paul Rico," whom he believed to be a defendant in the Romano case. Counts three and four alleged that Borders, in violation of 18 U.S.C. sec. 1952, travelled in interstate commerce with the intent to promote, carry on and facilitate the promotion and carrying on of an unlawful activity, namely a bribery in violation of 18 U.S.C. sec. 201.

204. Grand Jury 81-1 (MIA) indicted Alcee L. Hastings on two counts. The first count charged Alcee L. Hastings with conspiring to solicit a sum of money from criminal defendants in

return for Alcee L. Hastings' being influenced in the performance of official acts as a federal judge, in violation of 18 U.S.C. sec. 371. The second count charged Alcee L. Hastings with corruptly influencing, obstructing and impeding justice and endeavoring to do so in violation of 18 U.S.C. sec. 1503. This count alleged that Alcee L. Hastings had informed Borders of the substance and date of issuance of the forfeiture order that he was preparing and that Borders had passed the information to a third person, "Paul Rico," whom Borders believed to be a defendant in the Romano case.

205. United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), was assigned to Judge Edward T. Gignoux on January 4, 1981, sitting by designation.

206. On January 19, 1982, Judge Gignoux issued an order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), requiring the defendant to produce for the government, inter alia, those documents he intended to introduce as evidence in chief at the trial and requiring the government to produce, inter alia, all written or recorded statements made by the defendant.

207. Pursuant to the January 19, 1982 discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the prosecution produced various documents on January 19, 1982, including the tapes of the intercepted telephone calls between Judge Hastings and William Borders.

208. Pursuant to the January 19, 1982, discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), the defense, in mid-February, 1982, filed "Defendant's Reciprocal Discovery Inventory No. 1."

209. No letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings were included in Judge Hastings' production in mid-February, 1982, pursuant to the January 19, 1982 reciprocal discovery order in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida).

210. During his representation of Judge Hastings, Joel Hirschhorn, counsel for Judge Hastings from January 12, 1982 to March 2, 1982, never saw any letters or any drafts of letters about or to "Hemp" or Hemphill Pride written by Judge Hastings.

211. Joel Hirschhorn withdrew as counsel for Judge Hastings on March 2, 1982.

212. On February 1, 1982, Judge Hastings filed a motion in United States v. Alcee L. Hastings, No. 81-596-Cr. ETG (S.D. Florida), to quash his indictment and dismiss the criminal proceedings against him for lack of jurisdiction, in which he

argued that a sitting federal judge had to be impeached before a criminal prosecution could proceed.

213. On March 2, 1982, Judge Hastings' trial in United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), was stayed pending the interlocutory appeal of the motion he had filed challenging his prosecution prior to impeachment.

214. On March 2, 1982, in United States v. Hastings, NO. 81-596-Cr. ETG (S.D. Fla.), Judge Edward T. Gignoux granted William Borders' motion for change of venue of his trial, and ordered his case to be tried in Atlanta, Georgia.

215. William Borders was tried before a jury in Atlanta, Georgia from March 22, 1982 until March 29, 1982.

216. In the trial of United States v. Borders, (No. CR-82-75-A), neither William Borders nor Judge Hastings was called as a witness to testify.

217. The jury in United States v. Borders, (No. CR-82-75-A), convicted Borders on all counts on March 29, 1982.

218. Andrew Mavrides, an attorney then representing Judge Hastings, attended William Borders' trial in March 1982, as an observer, and ordered and received copies of the trial transcript.

219. On July 12, 1982, the United States Court of Appeals for the Eleventh Circuit upheld the trial court's denial of Judge Hastings' motion to quash his indictment and dismiss in United States v. Hastings.

220. In December 1982, Judge Hastings produced for the prosecution handwritten letters regarding Hemphill Pride, which Judge Hastings testified in United States v. Hastings were drafted on October 5, 1981.

225. The trial in United States v. Hastings, No. 81-596-CR-ETG (S.D. Florida), was held in Miami, Florida, beginning January 19, 1983, and continuing until February 4, 1983.

226. In United States v. Hastings, No. 81-596-CR-ETG (S.D. Florida), Judge Hastings' defense at trial was conducted by Judge Hastings and Patricia Williams.

227. In United States v. Hastings, No. 81-596-Cr. ETG (S.D. Florida), William Borders was not called to testify.

228. In United States v. Hastings, No.81-596-CR-ETG (S.D. Florida), Judge Hastings took the stand, appearing as the final witness in his defense.

254. Fort Pierce is approximately 60 miles north of West Palm Beach, Florida.

255. Fort Pierce is approximately 60 miles south of Melbourne, Florida.

256. Fort Pierce is approximately 115 miles from Orlando, Florida.

266. Before departing the L'Enfant Plaza Hotel on October 9, 1981, Judge Hastings did not check about the availability of flights leaving National Airport.

267. On July 20, 1981, Judge Hastings had a reservation on Eastern Airlines flight 197 departing Washington National Airport at 5:30 p.m. for Miami, Florida.

269. On February 20, 1981, at 7:30 a.m., a call was placed from Judge Hastings' home telephone number (305-731-8176) to William Borders' home telephone number (202-398-6321). The call lasted between two and three minutes.

270. On February 20, 1981, the non-jury trial of the forfeiture issue in the Romano trial was concluded, with ruling reserved.

271. By April 8, 1981, the defendants and the government had filed memoranda on the forfeiture issue in the Romano case.

272. On April 9, 1981, at approximately 10:40 a.m., Judge Hastings called William Borders' office. He left a message for William Borders to call. The message reads: "at office between 12 & 1."

277. A telephone message slip for "WAB" at the office of William Borders states: "At home at 6:30 only time he will be at home."

278. A telephone message slip for "WAB" left at the offices of William A. Borders indicates a telephone call from "Al C Hastings". The message slip is undated.

279. A telephone message slip at the offices of William A. Borders, dated 5/4, reflects an "urgent" call from "Al C. Hastings," the telephone number (305) 350-4289 and the message: "will await call between 12 and 1 from you." The message slip appears on a page of message book which shows calls between 10:00 and 10:20.

280. On May 6, 1981, at 12:07 a.m., a telephone call was made from a phone number in Madison, New Jersey, to a phone

number in Washington, D.C. That call was charged to Judge Hastings' residence phone.

281. In 1981, Judge Hastings did not know Madeline Petty. He did not meet her until his trial in 1983.

284. On July 5, 1981, a telephone call was placed from Judge Hastings' home phone number to William Borders' home phone number. The call lasted less than one minute.

285. Judge Hastings called William Borders on July 7, 1981, at 11:56 a.m. The call lasted less than one minute.

286. A telephone message slip left at the offices of William Borders, dated 7/9, at 11:50, for "Bill" from "Al Hastings" bears the following message: "Sat morning Air Fla. #91 at 1045 from Key West Will be departing at 1:00"

288. On September 20 or 21, 1981, William Borders and Judge Hastings spoke on the telephone.

289. Local 1922, located in Miami, Florida, is a chapter of the International Longshoremen's Association.

290. WAXY are the call letters of a radio station in Miami, Florida.

291. In 1986, Stephen Clark had been Mayor of Dade County, Florida for a total of 14 years, from 1970 to 1972, and from 1974 to 1986.

292. Peter Ferguson was Mayor Clark's campaign manager for a period of time which included all or part of 1984 and all or part of 1988.

293. Kevin "Waxy" Gordon was the zoning code enforcer for the city of Surfside, Florida, when the April, 1985, FBI investigation began and during early 1986. Gordon had previously held a position as a code enforcement officer for the city of Miami, Florida.

294. In 1986, Mayor Clark had known Kevin "Waxy" Gordon since the early 1960s.

301. 18 U.S.C. 2517(5) requires judicial approval of the investigation of criminal activity discovered as a result of the wiretap if that criminal activity was not included in the original application for the wiretap.

302. The U.S. Attorney's Office presented Judge Hastings with weekly progress reports, dated July 22 and 29, and August 5 and 12, 1985, describing the information obtained from the

wiretap authorized on July 15, 1985 and information obtained from other investigative techniques.

303. Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report on July 22, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the First Progress Report under seal.

304. Assistant U.S. Attorney Martinez presented Judge Hastings with the Second Progress Report on July 29, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the Second Progress Report under seal.

306. Assistant U.S. Attorney Martinez presented Judge Hastings with the Third Progress Report on August 5, 1985. On that date, Judge Hastings reviewed and signed the report and entered an order placing the Third Progress Report under seal.

308. Assistant U.S. Attorney Jon A. May presented Judge Hastings with the Fourth Progress Report on August 12, 1985.

310. Judge Hastings signed and reviewed the Fourth Progress Report on August 13, 1985, and at that time entered an order placing the Fourth Progress Report under seal.

311. Assistant U.S. Attorney John A. May and FBI Case Agent Geoffrey Santini presented Judge Hastings with the Fifth Progress Report, dated August 14, 1985. On August 15, 1985, Judge Hastings reviewed and signed the report and entered an order placing the Fifth Progress Report under seal.

312. The July 15, 1985 wiretap had been authorized by Judge Hastings for 30 days. On August 15, 1985, in a handwritten statement on the last page of the Fifth Progress Report, Judge Hastings authorized a one day extension of the July 15, 1985 wiretap.

315. On August 15, 1985, Assistant U.S. Attorney Jon A. May and FBI Case Agent Santini met with Judge Hastings with respect to an application for a 30 day extension of the wiretap and a supporting affidavit.

317. On August 15, 1985, Judge Hastings signed the application for a 30 day extension of the wiretap and entered all the necessary orders, including an order placing under seal the documents that had been presented to him by Assistant U.S. Attorney Jon A. May and FBI Case Agent Geoffrey Santini on August 15, 1985.

318. On August 21, 1985, Johnny Rivero introduced Kevin "Waxy" Gordon to "Gino", an undercover FBI Special Agent posing as a Houston-based entrepreneur who wanted to set up the

amusement operation. Gino was being impersonated by FBI Special Agent Richard J. Giannotti.

319. On August 22, 1985, Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the First Progress Report after the extension of the wiretap.

321. On August 22, 1985, Judge Hastings signed the First Progress Report after the extension of the wiretap and at that time entered an order placing the First Progress Report under seal.

322. On August 29, 1985, Assistant U.S. Attorney Roberto Martinez presented Judge Hastings with the Second Progress Report after the extension of the wiretap.

328. On August 29, 1985, Judge Hastings signed the Second Progress Report after the extension of the wiretap and at that time entered an order placing the Second Progress Report under seal.

334. On September 5, 1985, Judge Hastings signed the Third Progress Report after the extension of the wiretap, and at that time entered an order placing the Third Progress Report under seal.

346. Judge Hastings' sole source of the information about the actions and statements of Kevin "Waxy" Gordon and Gordon's relationship with Mayor Clark were the applications, affidavits and progress reports relating to the wiretap initially authorized by Judge Hastings on July 15, 1985 and which he extended on August 15, 1985.

347. In 1985, the Metropolitan Miami Action Plan ["MMAP"] was an organization designed to diminish the disparity between the black and white communities in the Miami, Florida area, concerning eduction, employment, housing and criminal justice.

348. On September 6 and 7, 1985, MMAP held its Third Annual Conference at the Hyatt Regency Hotel in Miami, Florida.

351. On September 6, 1985, the breakfast meeting of the MMAP Third Annual Conference was held in the Regency Ballroom of the Hyatt Regency Hotel.

352. According to the MMAP Third Annual Conference program, the breakfast meeting on September 6, 1985 was scheduled to begin at 8:30 a.m.

353. According to the MMAP Third Annual Conference program, registration for the conference began at 7:30 a.m. on the Terrace Level of the Hyatt Regency Hotel.

354. On September 6, 1985, during its Third Annual Conference, the MMAP served a continental breakfast at the Hyatt Regency Hotel in the area outside the Regency Ballroom.

360. At 8:58 a.m. on September 6, 1985, the FBI recorded an incoming telephone call to Kevin "Waxy" Gordon from Peter Ferguson in which Ferguson is reported to have said that Mayor Clark wanted to meet Gordon at "11:30 a.m. today at the Miami Outboard.

361. On September 6, 1985, in telephone calls recorded by the FBI, Kevin "Waxy" Gordon told Johnny Rivero and another individual that he would be meeting Mayor Clark that day.

366. In a telephone conversation recorded by the FBI on September 9, 1985, Kevin "Waxy" Gordon told an individual about his meeting with Mayor Clark at the Miami Outboard Club on September 6, 1985, stating that "Steve called me over there to tell me that he heard from Alcee Hasting . . . you know a Federal Judge. There's some rumor that I was involved with . . . ah . . . Clark, Ferguson and a councilman from Hialeah on some deal . . ."

372. On November 20, 1985, Kevin "Waxy" Gordon executed a plea agreement in which he agreed to cooperate with the FBI and U.S. Department of Justice.

373. On December 18, 1985, at the Miami Outboard Club, Kevin "Waxy" Gordon recorded a conversation he had with Peter Ferguson in which Ferguson suggested that Johnny Rivero was an undercover narcotics Special Agent.

374. In February, 1986, Kevin "Waxy" Gordon died after suffering a heart attack.

376. In March 1986, Mayor Clark and Special Agent Christopher Mazzella testified before a grand jury regarding the disclosure of confidential wiretap information.

377. On May 20, 1986, Eric Holder of the Public Integrity Section of the U.S. Department of Justice called Judge Hastings in order to interview him.

378. In the May 20, 1986, telephone call with Eric Holder, Judge Hastings declined to be interviewed.

IN THE SENATE OF THE UNITED STATES
Sitting As A Court of Impeachment

In re)
)
)
IMPEACHMENT OF)
JUDGE ALCEE L. HASTINGS)

REVISED PRETRIAL STATEMENT OF THE HOUSE OF REPRESENTATIVES

Pursuant to the First, Second and Fifth Orders of the Impeachment Trial Committee, the House of Representatives hereby submits its Final Pretrial Statement in the above-captioned matter.

I. Statement of the Case

This case involves repeated acts of misconduct by Judge Alcee L. Hastings, United States District Judge for the Southern District of Florida. Based on its investigation, the House of Representatives has charged Judge Hastings with seventeen Articles of Impeachment. Each article rests upon misconduct that warrants removal from the Federal bench.

Article I charges Judge Hastings with knowingly participating in a conspiracy to obtain a bribe from men who were criminal defendants in a case pending before him. Judge Hastings' cohort in the conspiracy was William Borders, a prominent Washington, D.C. attorney who served time in prison for his participation in the scheme. Judge Hastings and William Borders set up a deal in which for $150,000 the judge would reduce to probation the three year prison sentences he had previously imposed on Thomas and Frank Romano.

Unbeknownst to Judge Hastings and William Borders, the Government had learned, through a confidential informant, of the bribery plan. After corroborating the evidence provided by the confidential informant, the Government initiated an undercover operation in which a former FBI agent impersonated one of the criminal defendants, Frank Romano. William Borders approached the undercover operative, and the bribery deal was struck.

Judge Hastings' participation in the scheme is established by numerous actions on his part beginning as early as May of 1981 and continuing through October 9, 1981, the day of William Borders' arrest. Two ready examples of Judge Hastings' participation are the actions he took after William Borders made certain promises to the undercover operative designed to prove that Judge Hastings was "on board." First, William Borders promised that the judge would appear at a restaurant -- which the undercover agent designated -- on a particular day and at a

particular time. Judge Hastings appeared as promised. Second, William Borders and the undercover agent agreed that after the agent made a payment on the bribe, the judge would issue a court order returning a substantial amount of Romano property, which five months earlier the judge had ordered forfeited. A $25,000 down payment was made. Judge Hastings issued the promised order shortly thereafter.

In addition, a web of events -- including telephone calls between Judge Hastings and William Borders and their travel plans -- will demonstrate contact between Judge Hastings and Mr. Borders at times which correlate with key events in the Romano case, a pattern which does not occur on other occasions. And at a critical point in the Romano case, a coded conversation between Judge Hastings and William Borders was recorded.

Further evidence to be presented concerns Judge Hastings' flight from Washington, D.C. after learning of William Borders' arrest. The circumstances of that hurried departure belie Judge Hastings' innocence. Within two hours of the arrest, Judge Hastings was told that Mr. Borders had been arrested, that the arrest had to do with a charge of corruption in Judge Hastings' courtroom, and that the FBI desired to interview the judge that afternoon. Despite the fact that he was given the names and telephone number of the FBI agents to contact, Judge Hastings made no attempt to reach them. Instead he immediately left for Florida. Rather than going to National Airport, which had a flight available and was only four miles from his hotel, Judge Hastings took a $50 cab ride to Baltimore-Washington International Airport. And, instead of flying to Miami, where his car was parked, he deplaned at Ft. Lauderdale, an intermediate stop, and rented a car. The FBI eventually found Judge Hastings at his girlfriend's home late that evening.

Articles II through XV of the Articles of Impeachment focus on Judge Hastings' continued misconduct at the criminal trial in which he was charged with participating in the bribery conspiracy. Each of these articles specifies a separate instance in which the judge knowingly testified falsely under oath when he took the stand in his own defense. In each instance, Judge Hastings sought to mislead the trier of fact about his participation in the scheme with William Borders. His strategy was successful, for the judge was acquitted in the criminal case. The evidence, however, convincingly establishes that Judge Hastings consistently and repeatedly lied under oath.

Articles II through XV are based upon the statements Judge Hastings made under oath in his attempt to explain away the incriminating evidence. For example, Article V charges that Judge Hastings lied under oath when he testified that the reason he appeared at the restaurant designated by the undercover agent was that Mr. Borders had asked him to meet there for dinner. Yet

the evidence clearly establishes that on the designated night Mr. Borders was in Las Vegas for a championship fight, a trip that had been long planned. Moreover, Judge Hastings invited a date to the dinner, made a reservation for only two persons and did not object when two place settings were removed after he and his date were seated at a table for four.

This is only one example of a false statement made under oath by Judge Hastings. Each and every one of the fourteen instances of false testimony charged in the Articles of Impeachment justifies Judge Hastings' removal from the Federal bench.

Article XVI of the Articles of Impeachment charges misconduct wholly independent of the bribery scheme. Two years after his trial on the bribery conspiracy, Judge Hastings divulged confidential information obtained through an authorized Government wiretap. The FBI had initiated an undercover investigation into union corruption at the Miami, Florida docks, which in turn led to an investigation of corrupt zoning practices in Hialeah, Florida. In furtherance of its investigation, the Government had applied to the Court for a wiretap. Judge Hastings had granted the application and had received weekly progress reports that set forth the information of criminal activity obtained by the Government.

Although Judge Hastings had placed under seal the wiretap application and the progress reports, thereby rendering the information confidential, he nonetheless disclosed a critical fact contained in those documents to Dade County Mayor Steve Clark. Judge Hastings warned Mayor Clark to stay away from one of the targets of both FBI investigations, indicating that the target was "hot" and was using the Mayor's name in Hialeah. This disclosure of confidential information undermined both FBI undercover investigations. Judge Hastings' disclosure not only violated his own court order, it also thwarted two important investigations into public corruption and placed FBI undercover agents at risk.

In the final Article of Impeachment, Article XVII, the House of Representatives charges that the totality of Judge Hastings' egregious misconduct warrants his removal from the Federal bench. That misconduct -- Judge Hastings' participation in the bribery deal, his repeated false statements under oath, his fabrication of documentary evidence at his criminal trial, and his divulgence of critical wiretap information -- has undermined the impartiality and integrity of the Federal Judiciary and betrayed the trust of the American people. Judge Hastings' actions, taken separately, justify removal from office. Taken together, the misdeeds unquestionably bring disrepute on the Federal courts and the administration of justice, warranting his removal from the bench.

II. Witnesses

The House of Representatives presently intends to call the following witnesses, in the order listed, in its direct presentation of the case against Judge Alcee L. Hastings.

James Deichert. Organized Crime Strike Force, 2002 U.S. Courthouse, 75 Spring Street S.W., Atlanta, GA 30303

Mr. Deichert was the Department of Justice Strike Force attorney who prosecuted United States v. Romano. He will testify as to events in that case, including post-trial motions and orders.

Anticipated length of direct testimony -- one hour

William Dredge. c/o Roger Spaeder, Esq., Zuckerman, Spaeder, Goldstein, Taylor & Kolker, 1201 Conn. Ave., N.W., 12th floor, Washington, D.C. 20038

Mr. Dredge was the confidential informant who disclosed to the Government information about Judge Hastings' and William Borders' bribery schemes. Mr. Dredge will testify regarding his contacts with William Borders, the information he learned regarding the bribery schemes, and his agreement to introduce William Borders to the undercover operative who impersonated Frank Romano.

Anticipated length of direct testimony -- two hours

Neal Sonnett. 200 S.E. 1st Street, Suite 500, Miami, FL 33131

Mr. Sonnett represented Thomas and Frank Romano in post-trial proceedings before Judge Hastings. Mr. Sonnett will testify regarding his knowledge of contacts the Romanos received from Philip Moscato, on behalf of a Washington "bigshot," who claimed to have connections with the Romanos' judge.

Anticipated length of direct testimony if prior testimony not accepted -- 20 minutes

Martha Rogers. Arent, Fox, Kinter, Plotkin, & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036

Ms. Rogers was the Assistant United States Attorney in Miami, Florida to whom the confidential informant, Mr. William Dredge, first revealed his information concerning the bribery plan of Judge Hastings and William Borders. Ms. Rogers was actively involved in the initial investigation of the conspiracy and will testify about her role in that investigation.

Anticipated length of direct testimony -- 30 minutes

William Murphy. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Murphy was the FBI agent in charge of the Government's investigation into the bribery conspiracy. He will testify about the investigation, including the corroboration of the information provided by Mr. Dredge, the development of the undercover operation, the execution of the undercover operation, the conduct of Judge Hastings and William Borders during the course of the investigation, and the arrest of William Borders.

Anticipated length of direct testimony -- three hours

H. Paul Rico. Miami Jai Alai, 3500 N.W. 37th Avenue, 1st Floor, Miami, FL 33142

Mr. Rico is a former FBI agent who impersonated Frank Romano in the undercover operation. The House of Representatives has requested that the Impeachment Trial Committee accept his prior testimony at Judge Hastings' criminal trial. If called to give live testimony before the Committee, Mr. Rico will testify regarding what William Borders wrote down for him during their conversation on September 12, 1981 at the Miami International Airport.

Anticipated length of direct testimony -- 30 minutes

Airline Specialists.

The House of Representatives will submit the prior testimony of Richard Lowe, Willie James Washington and Laverne Boone, airline specialists who testified before the Eleventh Circuit Investigating Committee.

Mr. Lowe was a supervisor of ticket control and custodian of records for Eastern Airlines. His testimony concerned information contained in Eastern's records for flights for Judge Hastings on or about June 17-18, 1981, July 17-20, 1981, September 11-14, 1981, and October 9, 1981; and for William Borders for flights on or about July 21-22, 1981, and September 11, 1981. Mr. Lowe also testified as to seat availability on Eastern flight 197 on October 9, 1981.

Mr. Washington is a reservation specialist working for Eastern Airlines, who is familiar with that airline's computer reservation record system. His testimony concerned information contained in Eastern's records for William Borders for flights on September 12 and 13, 1981, and for Judge Hastings for flights between September 10, 1981 and September 14, 1981. In addition, Mr. Washington explained the meaning of symbols and other notations in the flight reservation histories for the above described flights.

Ms. Boone is Mr. Lowe's successor at Eastern Airlines. She testified as to airline records reflecting the flight plans of William Borders on May 5, 1981, July 9-10, 1981, and September 12, 1981; William Dredge on May 28-29, 1981; and Judge Hastings on May 5-10, 1981, June 17-18, 1981, July 7, 1981, July 18-22, 1981, and September 10-14, 1981.

Cynthia Rogers. 5531 Colorado Avenue, N.W., Apt. 312, Washington, D.C. 20010

Ms. Rogers was William Borders' secretary in 1981. She will testify regarding telephone message logs that were kept in that office during 1981.

Wayne A. McDonald. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. McDonald was the FBI agent that conducted the investigation to locate the pay telephone in the United States Courthouse in Miami, Florida from which a call was placed on April 9, 1981 and charged to Judge Hastings' residence telephone. Mr. McDonald will testify regarding the location of the pay telephone. He has been added to the House witness list due to Judge Hastings' objection to the authenticity of House Exhibits 201 and 202.[1]

Anticipated length of testimony: fifteen minutes

---

[1] *See* Statement on Behalf of Respondent Concerning Authenticity and Genuineness and, Where Appropriate, Status of Exhibits Listed by the House, dated July 3, 1989, at 11.

David Thomas. 1130 Hemlock Circle, Fort Pierce, FL 34950

Mr. Thomas is William Borders' cousin, and an organizer of a family reunion held in Ft. Pierce from September 11 - 13, 1981. He will testify as to when the reunion was planned, and Mr. Borders' arrival and attendance at the reunion.

Anticipated length of direct testimony -- 20 minutes

Donna Myrill Mendez. Queens County Courthouse, 125-01 Queens Blvd., Kew Gardens, NY 11415

Ms. Mendez was a friend and former law clerk of Jesse McCrary, a friend of Judge Hastings and William Borders. She was present in Judge Hastings' room at the Sheraton Hotel in Washington, D.C. on September 12, 1981, and will testify as to the arrival of Mr. Borders.

Anticipated length of direct testimony -- 30 minutes

Pearl Dabreau Mapp. 433 Elm Street, N.W., Washington, D.C. 20001

Ms. Mapp was a social acquaintance of Judge Hastings. She was present in Judge Hastings' room at the Sheraton Hotel in Washington, D.C. on September 12, 1981, and will testify as to the arrival of Mr. Borders.

Anticipated length of direct testimony -- 30 minutes

Essie Thompson. 1101 Riflecrest Avenue, Valrico, FL 33594

Ms. Thompson was a social acquaintance of Judge Hastings in 1981. She accompanied him to the Fountainebleau Hotel on September 16, 1981. She will testify about her conversations with Judge Hastings on September 15 and 16, the making of arrangements for their dinner date, and about the events of the evening of September 16, 1981.

Anticipated length of direct testimony -- 45 minutes

Madeline Petty. 5120 Third Street, N.W., Washington, D.C. 20011

The House Managers will submit Ms. Petty's prior testimony into evidence. Ms. Petty was a social acquaintance of Mr. William Borders in 1981. Her testimony relates to the planning of a trip by her and Mr. Borders to Las Vegas for a championship boxing match on September 16, 1981, and the events surrounding that trip. In addition, Ms. Petty would testify about several calls made from Judge Hastings' residence to her home during the time of the alleged conspiracy in 1981.

Jeffrey Miller. Miller & Beilly, 500 E. Broward Blvd, #1900, Fort Lauderdale, FL 33394

Mr. Miller was the law clerk working for Judge Hastings in 1981 who was assigned to United States v. Romano. He will testify as to his responsibilities with respect to that case and, in particular, the circumstances surrounding the preparation of the October 6, 1981 forfeiture order.

Anticipated length of direct testimony -- 45 minutes

Roger Shuy. 2032 48th Street, N.W., Washington, D.C. 20007

Dr. Shuy is a professor of linguistics at Georgetown University who specializes in conversation analysis. Dr. Shuy is offered as an expert witness and his curriculum vitae is attached hereto as Attachment A. In summary, Dr. Shuy has been a professor of linguistics at Georgetown University for 19 years, has published numerous articles on conversation analysis and has testified as an expert witness in both federal and state courts throughout the country. Dr. Shuy has previously provided testimony before the Senate on conversation analysis; specifically, in the expulsion proceeding of ex-Senator Harrison Williams.

Dr. Shuy will testify about the October 5, 1981 telephone conversation between Judge Hastings and William Borders. He will testify regarding his opinion as to whether or not that conversation is in code, and the analysis he used in reaching his opinion.

Anticipated length of direct testimony -- one hour

Hemphill Pride. 3025 Forrest Drive, Columbia, SC 29204

Mr. Pride was a close friend of Judge Hastings in 1981, and he also knew William Borders very well. Mr. Pride will testify regarding his relationship with Judge Hastings and William Borders, the events of October 9, 1981, matters pertaining to Mr. Pride's reinstatement to the South Carolina Bar, his contacts with Judge Hastings, William Borders and the Government following Judge Hastings' indictment, and his access to particular phones in Columbia, South Carolina.

Anticipated length of direct testimony -- two hours

Dale Bird. Federal Bureau of Investigation, Washington D.C. Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Bird is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Bird will testify regarding the events that took place on October 9, 1981.

Anticipated length of direct testimony -- 45 minutes

Wendy Loucks. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Ms. Loucks is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Loucks will testify regarding the interview conducted of Patricia Williams on October 9, 1981.

Anticipated length of direct testimony -- 20 minutes

John Simmons. Federal Bureau of Investigation, Atlanta Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Simmons is a Special Agent of the FBI, who participated in the investigation of the bribery conspiracy. Agent Simmons will testify regarding the interviews conducted of Judge Hastings' staff on October 9, 1981; the Government's attempt to locate Respondent on October 9, 1981; and the interview he conducted of Judge Hastings that evening.

Anticipated length of direct testimony -- 30 minutes

Albert Blocker. L'Enfant Plaza Hotel, Washington, D.C.

Mr. Blocker is the comptroller at the L'Enfant Plaza Hotel, in charge of all billing records at the hotel. He will testify as to records relating to Judge Hastings' stay at that hotel on October 9, 1981. He will also testify as to the hotel's record keeping systems with respect to long distance telephone calls by hotel guests.

Anticipated length of direct testimony -- 30 minutes

Senora Avery. AT&T, Room 4C, 3201 Germantown Road, Fairfax, VA 22030

Ms. Avery is an employee at AT&T experienced in the Hotel Billing Information System (HOBIS). She will testify as to that system and in particular, the HOBIS records for the L'Enfant Plaza Hotel for October 9, 1981.

Anticipated length of direct testimony -- 30 minutes

Robert I. Richter. Room JM-640, 500 Indiana Avenue, N.W., Washington, D.C. 20001

Judge Richter was the senior attorney from the Public Integrity Section of the Department of Justice assigned to the investigation and prosecution of Judge Hastings and William Borders. He will testify about the post indictment investigation, the discovery proceedings in United States v. Hastings, and Judge Hastings' criminal trial testimony.

Anticipated length of direct testimony -- one hour

Antonio Cantu. U.S. Secret Service, 1310 L St. N.W., Room 800, Washington, D.C. 20005

Mr. Cantu is an expert in the field of ink writing analysis, formerly with the Bureau of Alcohol, Tobacco & Firearms, and now with the Secret Service. Mr. Cantu's qualifications as an expert in this field are set forth in the curriculum vitae attached hereto as Attachment B.

Mr. Cantu authored a forensic report pertaining to the ink analysis of the handwritten letters disclosed to the prosecution in December, 1982 in United States v. Hastings. He will testify as to the contents of that report and related matters.

Anticipated length of direct testimony -- 30 minutes

David Attenburger. Federal Bureau of Investigation, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Attenburger is a forensic expert in the field of document analysis, and a special agent of the FBI. His qualifications as an expert in this field are set forth in the curriculum vitae attached hereto as Attachment C.

Mr. Attenburger was the author of a forensic report pertaining to the impression analysis of the handwritten letters disclosed to the prosecution in December, 1982 in United States v. Hastings. He will testify as to the contents of that report and related matters.

Anticipated length of direct testimony -- 30 minutes

Carolyn McIver. 2913 Larkhall Road, Columbia, SC 29223

Ms. McIver was an acquaintance of Judge Hastings. She will testify regarding Hemphill Pride's lack of access to her business telephone and Judge Hastings' trip to Columbia, South Carolina after his indictment.
The House Managers have requested that Ms. McIver's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 30 minutes

Andrew Chisholm. 330 Bradbury Drive, Columbia, SC 29223

Mr. Chisholm was an acquaintance of William Borders. He will testify regarding Hemphill Pride's lack of access to his business telephone.

The House Managers have requested that Mr. Chisholm's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Eleanor Golar-Williams. 1215 McDuffie Avenue, Columbia, SC 29204

Mrs. Golar-Williams is the ex-mother-in-law of Patricia Williams. She will testify regarding her contacts with Ms. Williams and Hemphill Pride's lack of access to her home telephone.

The House Managers have requested that Ms. McIver's IC testimony be admitted in lieu of live testimony if time constraints so necessitate.

Anticipated length of direct testimony -- 20 minutes

Roberto Martinez. Zuckerman, Spaeder, Taylor & Evans, Suite 1100, 2100 Ponce de Leon, Coral Gables, FL 33134

Mr. Martinez was the Assistant United States Attorney in charge of the investigation which was the subject of the wiretap supervised by Judge Hastings. He applied for authorization for the Title III wiretap and presented subsequent weekly progress reports to the judge. Mr. Martinez will testify about the underlying investigations, the information which he provided to Judge Hastings concerning those investigations, Judge Hastings' comments with regard to certain information obtained during the investigations, and the disclosure of confidential information by Judge Hastings which required the termination of major aspects of the investigations.

Anticipated length of direct testimony -- two hours

Geoffrey Santini. Federal Bureau of Investigation, New Orleans Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

Mr. Santini is a Special Agent of the FBI, who participated in the investigation which was the subject of the wiretap supervised by Judge Hastings. Agent Santini will testify about the FBI undercover operations, the presentation of the application for an extension of the wiretap, Judge Hastings' comments to him at that time, and the investigation of the disclosure of the confidential information.

Anticipated length of direct testimony -- 45 minutes

Steven Clark. Office of the Mayor, 111 N.W. 1st Street, Suite 230, Miami, FL 33128

Steven Clark is the Mayor of Dade County, Florida. He will testify regarding Judge Hastings' disclosure to him of information at the annual conference of the Metro-Miami Action Plan held on September 6, 1985.

Anticipated length of direct testimony -- one hour

Monsignor Bryan O. Walsh. Catholic Community Services, Central Office, 9401 Biscayne Blvd., Miami Shores, FL 33138-2998

Monsignor Walsh is the President of Catholic Community Services in Miami, Florida. He attended the annual conference of the Metro-Miami Action Plan on September 6, 1985. Monsignor Walsh will testify about events that occurred that morning.

Anticipated length of direct testimony -- 20 minutes

Christopher Mazzella. Federal Bureau of Investigation, Miami Region, 10th and Pennsylvania Avenues, N.W., Washington, D.C. 20353

In 1985 and 1986, Mr. Mazzella was an FBI supervisory special agent in the Miami field office of the FBI, supervising investigations of public corruption and labor racketeering. He will testify as to his participation in the undercover operation which was the subject of the wiretap supervised by Judge Hastings. He will also testify about his supervision of the investigation of the disclosure of the confidential information, and the effect of that disclosure upon the undercover operations.

Anticipated length of direct testimony -- two hours

III. Exhibits

A numbered index of exhibits is attached hereto as Attachment D. The index includes citations to United States v. Hastings and the proceedings before the Eleventh Circuit Investigating Committee for each exhibit which was previously introduced.[2] Documents attached to the House submissions on prior testimony are included in the index. Copies of the exhibits listed in Attachment D will be provided, in exhibit notebooks, to Respondent and to the Committee on June 22, 1989.

IV. Prior Testimony

---

[2] Citation is made to the hearings before the Subcommittee on Criminal Justice of the House Committee on the Judiciary for exhibits which were introduced only during those proceedings.

In its filings dated June 14 and June 15, 1989, the House of Representatives requested that the prior testimony of certain witnesses be admitted into evidence at the outset of the trial and that the Committee make provisional rulings on the admissibility of the prior testimony of certain other witnesses if, because of time constraints, the House Managers were to offer their prior testimony during the course of the trial in lieu of live testimony. Those requests are indicated in the above list of witnesses.

With respect to the prior testimony designated by Judge Hastings, the House Managers have no objection to the admission of the prior testimony of Alvoyd Merritt. However, the House objects to the admission of the entire transcript of the trial proceedings in United States v. Hastings, "not . . . offered to prove the truth of the matter [by Judge Hastings] . . . [but] to prove that accusations made in Articles I through XV were fully presented at that trial and were committed to the jury that acquitted respondent."[3]

As the House has repeatedly stressed, impeachment proceedings are separate and independent from the judicial process.[4] The verdict of a criminal jury is not determinative, for otherwise it would undermine the sole power of the Senate to try all impeachments. In analogous situations, the Senate has recognized this principle and refused to defer to a decision of the courts.[5] Accordingly, the issue of what evidence was presented to the jury is wholly irrelevant.

V. Conduct of Evidentiary Proceedings

The House of Representatives intends to allocate approximately 26 hours to the presentation of its case through direct testimony. The House anticipates no problems in the presentation of their direct case.

VI. Legal Principles

---

[3] Statement on Behalf of Respondent Concerning Use of Prior Testimony, June 14, 1989, at 1.

[4] *See*, for example, Response of the House of Representatives to Respondent's Motion to Dismiss Articles I Through XV, reprinted in S. Doc. 101-4, 101st Congress, 1st Sess., at 107 et. seq.

[5] *Ibid*. at 128-131.

Impeachment is not a criminal proceeding. The House of Representatives recognized this precept when it conducted its impeachment investigation of Judge Hastings. The Senate, in turn, endorsed this fundamental premise when it rejected, by an overwhelming vote, Judge Hastings' Motion to Dismiss based on the doctrine of double jeopardy.

Likewise, criminal conduct is not a prerequisite for impeachment. In the American experience, in numerous instances civil officials have been impeached and removed from office based upon Articles of Impeachment which did not charge a violation of the criminal law.

In this case, the House of Representatives has charged Judge Hastings with 17 articles, resting upon separate and distinct misdeeds each of which warrants removal from public office. Although these various acts of misconduct may also constitute criminal violations, the House has not charged Judge Hastings with any criminal offense. Rather, the House determined that in each instance, Judge Hastings conducted himself in a manner that is fundamentally inconsistent with his position of public trust.

Because impeachment is not a criminal proceeding and criminal misconduct is not charged, the formal elements of proof of criminal offenses do not apply. For example, in Articles II through XV, the House charges Judge Hastings with knowingly testifying falsely under oath fourteen different times at his criminal trial. The House did not allege, nor even mention in the Articles of Impeachment, the crime of perjury. Therefore, the Senate is not bound by the technical elements of proof of this crime, such as materiality.

Likewise, although Article XVI alleges conduct that is prosecutable under federal criminal law, the Senate is not and should not be bound by the elements of proof necessary to establish those criminal violations. Thus, for example, whether or not the Senate concludes that the Respondent intended to obstruct a "pending judicial proceeding," as is required in a criminal prosecution for obstruction of justice, the Senate may conclude that the Respondent's conduct constitutes a "high crime or misdemeanor" within the meaning of the Constitution.[6]

---

[6] All the conduct charged in the Articles of Impeachment does, in fact, violate criminal law standards. For example, the misconduct charged in Article XVI constitutes criminal contempt, in violation of 18 U.S.C. sec. 401. Section 2518(8)(c) of Title III of the federal wiretap law provides that "Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying judge." The House will prove that the Respondent was aware of a clear and definite court order (his own sealing order) which he willfully disobeyed, thereby satisfying

Because impeachment is not a criminal proceeding, the criminal standard of proof, "beyond a reasonable doubt," does not necessarily apply. Rather, "the question of standard of evidence is for each Senator to decide individually when voting on Articles of Impeachment."[7]

With these legal principles in mind, the House Managers turn to the individual Articles of Impeachment.

Article I. The first article charges that Judge Hastings and William Borders entered into a corrupt conspiracy. The essence of a conspiracy is a partnership, a combination of two or more persons who join together to accomplish an illicit purpose. The House charges that Judge Hastings was a knowing participant in such a partnership with William Borders, and the illicit purpose of that partnership was to obtain a bribe from Thomas and Frank Romano.

By its very nature, a conspiracy is characterized by secrecy. Therefore, the existence of a conspiracy may be inferred from circumstances and the conduct of the parties involved. When determining whether a conspiracy existed, it is appropriate to consider the actions and statements of the alleged participants as proof of the partnership and its illicit purpose.

Articles II through XV. These articles charge Judge Hastings with knowingly testifying falsely under oath in an effort to mislead the trier of fact at his criminal trial. The

---

the elements of that criminal law offense.

In addition, the alleged conduct constitutes obstruction of justice in violation of 18 U.S.C. sec. 1503. The elements of that offense are that the defendant corruptly endeavored to influence, obstruct or impede the due administration of justice. The courts have held that the intent required to establish this offense is merely that "the defendant should have reasonably foreseen the natural and probable consequence of the success of his scheme. . . ." United States v. Silverman, 745 F.2d 1386, 1393 (11th Cir. 1984), United States v. Buffalano, 720 F.2d 50 (2d Cir. 1984); United States v. Neiswender, 590 F.2d 1269 (4th Cir. 1978), cert. denied, 441 U.S. 963 (1979). Thus, the element of acting "corruptly" does not require that the violator acted for evil or pecuniary reasons. Here, the proof to be offered by the House will satisfy these elements.

[7] This was the ruling of the Chair (Senator Mathias presiding) when the Senate defeated the motion by Judge Harry Claiborne during his impeachment trial to apply the criminal standard of proof. S. Doc. No. 48, 99th Cong., 2d Sess. 108, 148.

House will prove that in fourteen separate instances, Judge Hastings violated his oath to tell the truth, and that he did so in order to obtain an acquittal. Few actions are more subversive of the legal process than lying on the stand. A judge who has sought to mislead persons engaged in any aspect of the legal process is unfit to remain on the bench.

In his Answer to the Articles of Impeachment, Judge Hastings states that with respect to four of these articles, Articles X through XIII, his testimony was false, but that he believed it was true at the time he made the statements.[8] The House will establish, however that Judge Hastings knowingly testified falsely with respect to these and the other statements alleged in Articles II through XV. Such conduct is inconsistent with holding the office of United States District Judge. The foundation of the judicial system is that persons testifying under oath will tell the truth, the whole truth, and nothing but the truth. If a judge testifies falsely, he sets a standard for candor in his own courtroom which cannot be condoned.

Article XVI. In this article, the House has charged Judge Hastings with leaking confidential information which he learned while acting as a supervisory judge of an authorized Government wiretap. The House will prove that there were court orders, entered by Judge Hastings himself, placing under seal the information contained in the Government's application for the wiretap and the subsequent progress reports. Judge Hastings had knowledge of what was in those documents, and those documents were the sole source of his information. By disclosing that information to Mayor Clark, he sought to place himself above the law, a position incompatible with the duty of all citizens.

Article XVII. The final Article of Impeachment rests upon the totality of Judge Hastings' misconduct. Article XVII calls upon the Senate to look at the pattern of his misbehavior, beginning with the bribery conspiracy in 1981, continuing with false testimony and fabricated evidence submitted at trial in 1983, and culminating in his disclosure of wiretap information in 1985. This article charges that taken as a whole, the pattern of misconduct is such that Judge Hastings is unfit to remain in office.

Respectfully submitted,

The United States
House of Representatives

---

[8] See Answer to Articles of Impeachment at 8.

By Alan I. Baron
Alan I. Baron
Special Counsel

Managers of the House of Representatives

Jack Brooks
John Conyers, Jr.
Mike Synar
John Bryant
Hamilton Fish, Jr.
George W. Gekas

Impeachment Trial Staff

Alan I. Baron, Special Counsel
Janice E. Cooper, Assistant Special Counsel
Patricia Wynn, Assistant Special Counsel
Lori E. Fields, Assistant Special Counsel

House Judiciary Committee Staff
Participating in Impeachment Trial Preparation

William M. Jones, General Counsel
Alan F. Coffey, Jr., Chief Associate Counsel
Daniel M. Freeman, Counsel
Peter Levinson, Associate Counsel
Raymond V. Smietanka, Associate Counsel

July 7, 1989

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

July 7, 1989

Anthony J. Harvey
Committee Administrator
Impeachment Trial Committee
902 Senate Hart Office Bldg.
Washington, D.C. 20510

Dear Mr. Harvey:

With this letter, I am transmitting by telefacsimile Respondent's Pretrial Statement. I am dispatching this letter and fifteen copies of the statement by Federal Express for Saturday delivery so that copies may be made available to the members of the committee before Monday. You should note that a few additional witnesses have been added since the draft was transmitted on Wednesday.

The need to prepare for the proceedings on Monday and the logistics of shipping our documents and records to Washington have made it impossible for me to prepare Respondent's exhibit list at this time. I shall work on that in Washington as rapidly as time permits. As reported in the enclosed statement, Respondent does not presently anticipate offering any exhibits that are not among the materials produced by the House or pursuant to the committee's requests or subpoenas. There will be no surprises; just logistical problems that we will work to minimize as best we can.

I appreciate the courtesies and cooperation that you and other members of the committee's staff have and doubtless will extend.

Sincerely,

Terence J Anderson

Terence J. Anderson

cc: John Bryant
c/o Impeachment Trial Staff

In the
SENATE OF THE UNITED STATES
Sitting for the Trial of an Impeachment

THE HOUSE OF REPRESENTATIVES,
OF THE UNITED STATES,
plaintiff,

v.

THE HONORABLE ALCEE L. HASTINGS,
a Judge of the United States District Court
for the Southern District of Florida,
respondent.

RESPONDENT'S PRETRIAL STATEMENT

Respondent submits this pretrial statement pursuant to the Impeachment Trial Committee's prior orders, but without waiving any of the objections he has asserted to the procedures and limitations the committee has mandated for the conduct of evidentiary hearings in this case.

I. Statement of the Case

Article I realleges that Judge Hastings was a knowing participant in William Borders's corrupt 1981 scheme to extract $150,000 from the Romanos. The mass of detail assembled by the House cannot, however, camouflage three simple facts. First, the pattern of contacts established by the mass of telephone and travel records is consistent with the judge's innocence. Meetings of the National Bar Association, its Judicial Council, and its executive committee; Pride's release from prison and his passionate desire to avoid disbarment and one day to regain admission to the bar; Borders's dispute with, suit against, and ultimate victory over the President; the judge's trips to and through Washington for ABA committee meetings or speaking engagements; the dinner-cruise for Borders -- these and other events in 1981 fully justified and fairly explained the indicated contacts between the two men.

Second, the pattern is *inconsistent* with guilt. For example, *by all accounts*, it was during the first week in September, and prior to September 10 in any event, when Judge Hastings instructed Jeffrey Miller, his law clerk, to draft the order giving the Romanos their money back. It was not until September 10, however, that Dredge cut his deal with the government and *first* called Borders to say the Romanos were ready to deal. Thus, the judge's decision to give the money back had been made *before* the government's attempt to make a "deal" with Borders had been initiated. So too, *by all accounts*, Judge Hastings did not discuss the order with Mr. Miller or urge him to complete it *at any time* between September 10 and October 5, notwithstanding Borders's early and repeated promises to Rico/Romano that the order would be issued "within ten days" and by September 29 in any event. The absence of communication between the judge and his clerk, let alone prodding, cannot be reconciled with the claim that the judge was party to Borders's promise that the order would be issued by September 29. Similarly, seven years of investigation have produced no evidence of any contact between Borders and the judge between September 29, the date by which Borders said the order would issue, and 4:22 p.m. on October 5, the time when Borders assured Rico/Romano the matter *had been* taken care of. Wherever Borders was getting his information, it was clearly *not* from Judge Hastings, and whatever concerns Borders had over the timing of the order were clearly *not* shared by Judge Hastings.

All concede that the judge's order was in fact compelled by precedent. The only claim is that its timing is evidence of guilt. That claim will not wash. The order was not issued on the promised date, and there is no evidence of contacts that would have been required if Judge Hastings had been a participant on Borders's scheme.

Third, Borders did in fact hold himself out to criminal associates as a "rainmaker". He claimed that he had the power to control and influence decisions by judges other than Judge Hastings. He made those claims with respect to judges whose integrity has never been questioned. In 1981, even the FBI has acknowledged that respondent also was such a judge. At the same time, it is equally clear that Borders had effectively concealed this aspect of his character from his family, his friends, and his associates in the profession, in high public office, and in other political positions. Judge Hastings fell into that latter category. He was both a close friend and an associate who had obtained high office.

It is clear that, as a rainmaker, Borders shared a common objective with Dredge and the FBI: For any of them to achieve their respective goals, it was necessary that Borders manipulate events to make it *appear* that he had some control over the judge. Borders must have known that even the existence of his friendship with the judge would not satisfy someone like the Romanos. He knew he would have to cause or accurately predict some action by the judge that would make it appear the judge was responding to Borders's direction. Dredge must have known that the government's position on the value of his cooperation, and thus his sentence, were likely to depend upon Borders providing a successful demonstration implicating the "big fish," the federal judge. The FBI agents recognized that something more concrete than Borders's assurances would be required to warrant action against the judge. No one in this unholy alliance could proceed unless Borders could create that appearance.

Borders's invitation did induce the judge to appear at the Fontainebleau on September 16, the first step in the demonstration. Borders's confident prediction that the order would be issued by September 29 proved false, however, and established only that he was unaware that Mr. Miller's term as clerk had been extended beyond the end of September. Given the judge's failure to issue the order on time and the marginal nature of the dinner at the Fontainebleau as evidence suggesting the judge's involvement, the only fact that remains unclear is why the FBI, if it truly thought the judge might be involved, insisted and the Justice Department agreed that Borders be arrested at the scene of the payoff.

The House managers in 1989, as did the prosecutors in 1983, seek to bolster this marginal case by characterizing Judge Hastings's return to his home in Florida on October 9, 1981, as "flight" evidencing a guilty state of mind. Neither the characterization nor the claimed inference can stand. When Judge Hastings was advised that the FBI had arrested Borders and wanted to talk to the judge, he had the same three choices that every citizen has. He could have properly declined to be interviewed at all. He could have met with FBI agents in Washington. He could have returned home and agreed to speak with them in a community where he enjoyed considerable support and had access to advisors he knew and trusted.

None of these choices could fairly be characterized as supporting an inference of guilt under our system of government, certainly not when made by a citizen knowledgeable about the criminal justice system. Judge Hastings was advised to take the third course. The fact that he lived with and cared for his invalid mother virtually dictated that he take that course. He returned to Fort Lauderdale and later that same day spoke with FBI agents. By their own account, he freely answered all the questions they propounded. His conduct was both appropriate and consistent with the conduct that might be expected of a person in a position such as his.

Moreover, the attempted characterization in this case asks the Senate (as it asked the jury) to ignore the obvious. Judge Hastings was a black, liberal judge responsible for deciding politically sensitive cases on which his views of the proper application of the Constitution and laws of the United States had differed and were likely to differ from those in the then-administration. He had just learned that the FBI had arrested one of the most prominent black, Democratic lawyers in the country -- the immediate past-president of the National Bar Association, a former adviser to the Carter administration and the Democratic National Committee, and a man who had just sued President Reagan and won. Given the FBI's then record with respect to black political figures, it is the judge's decision to speak with FBI agents at all, rather than his decision to return to his home community before doing so, that is noteworthy.

The allegations that the judge testified falsely at trial made in Articles II through XV must also be rejected. These accusations were aptly described by one member of the House Judiciary Committee as "piling on". If the judge was not a guilty participant in Borders's corrupt scheme, then his denials and his explanations for the circumstances and events the prosecutors urged as evidence of his guilt must be accepted as a presumptively honest account. If he was guilty, his testimony was false. The decision on Article I should be dispositive.

Moreover, the House makes no claim that it has evidence on these points that was not available to the prosecutors well before trial. Indeed, the principal "new" witnesses on these points are two additional persons who were present on September 12, 1981, when Borders materialized at the Sheraton; a linguistics expert willing to express an expert opinion based upon an examination of a twenty-nine (29) second telephone conversation; and an AT&T employee willing to express an after-the-fact opinion on the operation of the Hobis system at the L'Enfant Plaza eight years ago.

The testimony of these "new" witnesses should be interesting. It will be interesting to learn, for example, how recollections concerning the evening of September 12, 1981, recollections which the zealous prosecutors apparently thought unworthy of presentation at the trial in 1983, have become so improved that they now merit serious consideration by the Senate in 1989. So too, it is and will remain unclear why the House believes that the Senate should now reach a conclusion about the meaning of the October 5 telephone conversation after hearing a linguist's opinion that it was "code" that differs from the conclusion that the jury reached after hearing the detailed and impassioned argument to the same effect that the prosecutor made at the 1983 trial.

The jury chose to believe the judge's denials and the essential accuracy of the explanations he provided. The mass of detail offered by the House is no more than smoke offered to camouflage the otherwise apparent defects in the case. The House has no "new" evidence against the judge that was not fairly available to the prosecutors in 1983. Indeed, the only *new* evidence is that Borders was a rainmaker and that Dredge had a powerful motive and every opportunity to manipulate events to make it appear that Borders's false claims were true. Judge Hastings was, is, and will remain innocent of these accusations.

Judge Hastings has denied under oath that he was the source of Mayor Clark's information, and thereby has denied the only material accusation made in Article XVI. Moreover, that accusation is based upon a story that cannot be true. According to the mayor's vivid accounts, the disclosure took place *after* Judge Hastings had completed his keynote address to the Metro-Miami Action Plan Conference on September 6, 1985. According to the mayor's oft-repeated version, *after* the speech, the judge came down from the podium, into the audience, and whispered to Clark, "Stay away from Kevin Gordon. He's hot. He's using your name in Hialeah." According to the mayor, *after* this disclosure, he returned to his office, and called Peter Ferguson, a political associate. According to the mayor, it was only *then* that he told Ferguson to call Gordon and tell Gordon the mayor wanted to meet with him at the Miami Outboard Club at noon that day. The mayor has steadfastly held to this account, and even the House's special counsel could not induce him to accept the possibility of another.

The mayor's story cannot be reconciled with the FBI's evidence. *By all accounts*, the judge's speech could not have ended until well after 9:30 a.m. The FBI, however, intercepted Ferguson's call to Gordon, the call in which Ferguson told Gordon that the mayor wanted to see him at noon, at 8:58 a.m. -- *before* the judge's speech even began. Judge Hastings thus stands accused by a man whose story cannot be true.

The accusation made and the story of its making are, however, far from unrelated to the accusations made in the first fifteen articles. The mayor was (and perhaps is) an FBI "groupie". Anthony Amoroso, the supervisory agent on Operation Apple Eye, was one of the mayor's regular golf partners. The FBI's own records show that in July 1985, two months before the alleged disclosure, H. Paul Rico, the former agent who played the part of Frank Romano in Operation Apple Eye, told an intermediary for Peter Ferguson and Mayor Clark to call Tom Dowd, another FBI agent the mayor had befriended, to inquire whether the mayor and Ferguson were under investigation. Moreover, the FBI's interest in Hialeah zoning was routinely being reported in the Miami press. The mayor had sources of information, but Judge Hastings was not one of them.

The very alacrity with which the FBI seized upon the claim that Judge Hastings was the source raises troubling concerns. The studiousness with which the FBI failed to explore alternative sources when its agents learned the mayor's account could not be true and when they failed to find any corroborating witnesses for an encounter that allegedly occurred in the presence of some 800 people compounds the concerns. The vehemence with which the FBI objected to the Justice Department's preliminary decision not to prosecute the case should lay the matter to rest. The accusation that the judge was the source of the mayor's information is false, and the vigor with which it has been pursued provides strong support for the view that the judge is the victim of an improper vendetta.

Article XVII is surplusage. That article realleges the central accusations made in the prior sixteen articles -- that Judge Hastings was a participant in Borders's corrupt 1981 scheme (article I), that Judge Hastings presented false testimony and fabricated evidence at his 1983 trial (articles II-XV), and that it was Judge Hastings who was the source of Mayor Clark's information (article XVI). With a rhetorical flourish, the House realleges these in the conjunctive, claiming it can show that the judge is guilty of all three accusations. Thus, only those Senators who had voted to convict on *each* of these substantive accusations could fairly vote to convict on the seventeenth article. But if Judge Hastings is convicted on *any* of the prior articles, he will have been removed from office and further votes would be like the article itself -- mere surplusage and piling on.

II. Witnesses

The committee's decision to limit the time available for presentation of evidence has forced respondent to revise his position on the use of prior testimony. Respondent will offer, in any event, the entire record from *United States v. Hastings* and the entire available transcript of the proceedings and the exhibits from *United States v. Borders* as exhibits in this case. (The purposes for which those records will be offered are developed below under the heading "IV. Prior Testimony and Related Issues.") Respondent now requests that either party be permitted to offer any testimony and related exhibits admitted at either trial as substantive evidence here.[1]

Respondent has divided the witnesses into five categories. In section A below, he identifies those witnesses whose live testimony he presently believes will be necessary without regard to the existence or use of any prior testimony they may have given. The names of witnesses who are adverse or expected to be hostile are indicated with an asterisk (*). He requests that subpoenas and, where specified, subpoenas *duces tecum* be issued to assure their presence and the production of necessary records.[2] In section

---

[1] Respondent emphasizes that he has been forced to take this in order to satisfy the commands embodied in the committee's prior orders while seeking to assure a record that is adequate for review by the Senate. Respondent emphasizes that he has done so under protest and without waiving any of the objections he has previously asserted.

[2] Respondent has supplied the best address available to him for each of these witnesses. Given the limitations on his time and resources, he cannot be sure that all these addresses are accurate. Accordingly, he requests that the

B, respondent has identified those witnesses for whom he presently intends to present prior testimony in lieu of live testimony. He leaves to the committee the question whether subpoenas should be issued and served for these witnesses.

In section C, respondent identifies those persons on the House witness list whom he presently believes will have to be called or recalled during respondent's case to assure an orderly and coherent presentation of the evidence. It is entirely possible that other House witnesses may have to be recalled. That decision will depend upon the content of their testimony and the latitude allowed by the committee in cross-examination. For that reason, he requests that the committee retain under subpoena all persons called by either side until both sides have agreed they may properly be excused.

Respondent has identified only those witnesses whose testimony he presently believes will be necessary in this case. He anticipates that the testimony presented by the House and during his own case may provide good cause for calling additional witnesses from among those identified on the parties' preliminary witness lists. He has taken this factor into account in his allotments of time for witnesses named in sections A and C. He discusses the conditions under which this may become necessary in section D.

Section E identifies persons to whom respondent requests that subpoena's *duces tecum* be issued and served and

---

committee provide or request any assistance necessary to locate or serve these witnesses.

describes the documents to be produced. Respondent has received redacted and sometimes poor copies of documents he believes necessary for his defense. The committee has obtained (and demonstrated that it can promptly obtain) the court authorizations necessary to permit the disclosure of documents and information that might otherwise be protected by the rule of secrecy for grand jury proceedings[3] and the statutory standards regulating the use and disclosure of electronic surveillance materials.[4] Those authorizations eliminate any legitimate basis for withholding documents or other information from respondent. Respondent's right to a fair trial clearly overrides any privacy or other concerns the Justice Department and its FBI have cited as grounds for withholding or redacting the documents requested.[5] Absent unanticipated questions concerning authenticity, respondent does not anticipate that the persons identified in this section will be called to testify.

A. Witnesses to be Presented for Live Testimony

1. **Steven A. Allen**, Davis, Fedder & Allen, 1000 Mercantile Building, 2 Hopkins Plaza, Baltimore, Maryland.

Mr. Allen was the Assistant United States Attorney in Baltimore who was responsible for prosecuting William Dredge. He dealt with Borders and his local counsel, Alvin Dwight Pettit, in May and June 1981; he participated in the negotiations that led to Dredge's plea agreement on September 10, 1981; and he was involved in events that followed Borders's arrest on October 9, 1981. He will be called to testify concerning matters he observed that are relevant to the issues in the case.

---

[3] Rule 6(e), Federal Rules of Criminal Procedure.

[4] 28 U.S.C. §§ 2510 et seq.

[5] *United States v. Nixon*, 418 U.S. 683, 707-713 (1974) and authorities cited there.

Estimated time for direct examination: **Thirty minutes**

2. **Anthony A. Amoroso**,* Federal Building, 299 E. Broward Blvd. Suite 303, Fort Lauderdale, Florida 33301.

Mr. Amoroso was the supervisory FBI agent in Miami for the 1981 investigation. He was at the Fontainebleau Hotel on September 16, 1981, and at the scene of Borders's arrest on October 9, 1981. Mr. Amoroso was also a friend and a golf partner of Mayor Stephen P. Clark through September 6, 1985. He would have been aware of the undercover investigation that had cast suspicion on the mayor. He will be called to testify concerning his role and matters he observed during both the 1981 and the 1985-86 investigations.

Estimated time for direct examination: **One hour**

3. **Silvio Cardoso**,* c/o Hialeah City Council, 501 Palm Avenue, Hialeah, Florida 33010.

Mr. Cardoso is a city council member in Hialeah, Florida. Kevin Gordon and Mayor Clark advised the FBI that Cardoso was the person who would take care of the zoning problem in Hialeah. It has since been reported that the FBI undercover agent "sold" Cardoso a file purporting to contain information about FBI investigations into zoning corruption in Hialeah. Neither Cardoso nor the information he purchased have ever been produced for examination in the inquiries that preceded this impeachment. Cardoso will be called to testify concerning information he had and may have given Mayor Clark.

The subpoena should command that Mr. Cardoso bring with him the original or a copy of the file and any other materials concerning investigations conducted by the FBI he received from the person or persons who allegedly supplied him with this information.

Estimated time for direct examination: **Thirty minutes**

4. **James Cobb**, 1621 New Hampshire Avenue N.W., Washington, D.C. 20009.

Mr. Cobb practiced law with Borders prior to Borders's arrest in 1981. Mr. Cobb also served as President of the National Bar Association and knew Judge Hastings. He will be called to testify concerning Borders's practices and eccentricities and other matters relevant to this case.

Estimated time for direct examination: **Fifteen minutes**

5. John Crump, 1773 T. Street, N.W., Washington, D.C. 20009.

Mr. Crump is the Executive Director of the National Bar Association. He was well-acquainted with Judge Hastings and with Borders. He is an appropriate person to produce certain records and testify concerning NBA activities in 1981. He testified at the 1983 trial. He will be called to testify concerning his knowledge of the men and events in 1981 and to produce relevant NBA records.

The subpoena to Mr. Crump should command that he bring with him records showing the dates, places, and agenda for meetings of the National Bar Association, its Judicial Council, its board of directors, and its executive committee during the year 1981.

Estimated time for direct examination: **Thirty minutes**

6. **Warren Hope Dawson**, 1467 Tampa Plaza, Tampa, Florida 33605.

Mr. Dawson was a president of the NBA who knew Judge Hastings and Borders. He testified concerning Borders and his practices and eccentricities at the 1983 trial. He will be called to provide similar information in this case.

Estimated time for direct examination: **Fifteen minutes**

7. **Tom Dowd**,* Federal Bureau of Investigation, 16320 N.W. 2nd Avenue, North Miami Beach, Florida 33169.

Mr. Dowd was an FBI agent in Miami. In July 1985, two months before the alleged wiretap disclosure, agent Dowd received a telephone call from a person identified as Glenn Whittle. Mr. Whittle asked agent Dowd to verify that the FBI was then investigating the activities of two of agent Dowd's friends -- Mayor Stephen Clark and Peter Ferguson. Mr. Dowd has never been called to testify. He will be called to testify about this call and the events that preceded and followed it.

Estimated time for direct examination: **Twenty minutes**

8. **Peter Ferguson**,* 891 Harbor Drive, Key Biscayne, Florida.

Mr. Ferguson was Director of Marketing at Fiscal Operations, a company operating at the Port of Miami. He had also served as Mayor Clark's campaign manager and was apparently involved in matters that were the subject of the undercover investigation of which the 1985 wiretap was a part. Mayor Clark identified Ferguson as the person he called to arrange a meeting with Gordon after he learned that Gordon was "hot." Ferguson's call to Gordon was intercepted by the FBI. Mr. Ferguson has never been called to testify concerning these matters. He will be called to testify concerning his role in the events that gave rise to the 1985-86 investigation.

Estimated time for direct examination: **One hour**

9. **James Gunn**, 3940 S.W. 124th Avenue, Miami, Florida 33175.

Mr. Gunn was proffered at the 1983 trial as a witness with knowledge of rainmaking. He will be called to provide similar information here and to testify concerning other relevant matters.

Estimated time for direct examination: **Thirty minutes**

10. **Jimmy Harmon**,* 112 Rose Drive, Walterboro, South Carolina 29488.

Mr. Harmon was an agent for the Bureau of Alcohol, Tobacco & Firearms. He credited Dredge with supplying him information over the years that had made "half" Harmon's career. Dredge initially approached Harmon with information on Borders's scheme. Harmon rejected the information. Mr. Harmon will be called to provide information concerning Dredge and his initial approach in this case.

Estimated time for direct examination: **Thirty minutes**

11. **The Honorable Alcee L. Hastings** (no subpoena necessary)

Judge Hastings testified at his 1983 trial and, without waiving any rights or privileges, we would anticipate calling him to testify at the trial in this case.

Estimated time for direct examination: **Two hours**

12. **The Honorable William Hoeveler**, 300 N.E. First Avenue, Miami, Florida 33101.

Judge Hoeveler has served as a judge of the Southern District of Florida for many years. He was called to testify concerning his knowledge of rainmaking claims by lawyers and others at the 1983 trial. He will be called to provide testimony on this and other relevant matters in this case.

Estimated time for direct examination: **Thirty minutes**

13. **The Honorable James Lawrence King**, 300 N.E. First Avenue, Miami, Florida 33101.

Judge King has served as a judge for the Southern District of Florida throughout Judge Hastings's tenure. He was chief judge of that court at the time of the alleged wiretap disclosure in 1985 and at the time details of that investigation leaked to the press in 1986. Chief Judge King will be called to testify concerning his role in the 1985 investigation, and his conversations and observations when the details of the grand jury investigation appeared in the press in 1986, and his observations and knowledge of Judge Hastings's performance as a judge since 1979.

Estimated time for direct examination: **One hour**

14. **The Honorable Henry Latimer**, Broward County Courthouse, 200 S.E. 6th Street, Fort Lauderdale, Florida 33301.

Judge Latimer was a state court judge who knew both Judge Hastings and, through the NBA, Borders. He testified at the 1983 trial about his knowledge of both men. He will be called to testify to similar matters in this case.

Estimated time for direct examination: **Fifteen minutes**

15. **Jesse McCrary**, 3050 Biscayne Blvd. #300, Miami, Florida 33317.

Mr. McCrary knew both Judge Hastings and Borders. At Borders's request, McCrary briefly represented Dredge after his arrest in May 1981. He was with the judge at the Sheraton Hotel on September 12. He testified at the 1983 trial. He will be called to testify concerning his knowledge of the men and his recollection of relevant events in this case. Mr. McCrary was also present and a participant at the MMAP Conference on September 6, 1985, and will testify concerning his recollection of the events that took place there.

Estimated time for direct examination: **One hour**

16. **Joseph Nesline**, [The committee has accurate information concerning Mr. Nesline's wherabouts.]

Mr. Nesline was reputed to be a significant underworld figure in Washington, D.C. He knew Borders and had known Dredge since they had been in the same penitentiary. He introduced Dredge to Borders and was a participant and perhaps the author of Borders's rainmaking schemes. During an unrelated FBI investigation in 1985, however, Mr. Nesline told undercover agent Kendall Shull that Nesline "did not believe that William Borders had any control or influence over Judge Hastings" and that "he thought Borders was scamming his friend." Mr. Nesline was, by all accounts, in a position to know. If competent, Mr. Nesline will be called to testify concerning his knowledge and role in the events of 1981.

Respondent will call Mr. Nesline if the committee determines he is competent to testify. Respondent requests an early ruling by the committee on Mr. Nesline's competency in order that respondent may make any adjustments to his case that are necessitated by that ruling.

Estimated time for direct examination: **One hour**

17. **Margaret Dabreau Owens**, Apt. 106, 931 Longfellow Street, N.W., Washington, D.C.

Ms. Owens, along with her sister Pearl Dabreau Mapp and Donna Myrill Mendez, were with Judge Hastings and Jesse McCrary at the Sheraton Hotel on September 12, 1981. She will be called to testify concerning her recollection of the events of that evening and other related matters.

Estimated time for direct examination: **Thirty minutes**

18. **The Honorable Mathew Perry**, United States District Court, Columbia, South Carolina 29204.

Judge Perry serves as a federal judge in Columbia, South Carolina. He knew Judge Hastings and, through the NBA, Borders. Hemphill Pride had practiced law with Judge Perry before the judge went on the bench. Judge Perry testified at the 1983 trial. He will be called to testify about Pride and his relationships with Judge Hastings and with Borders and other events that occurred in 1981.

Estimated time for direct examination: **Fifteen minutes**

19. **Martin R. Raskin**, Raskin & Graham, 744 N.W. 12th Avenue, Miami, Florida 33135.

Mr. Raskin was a Strike Force Attorney and later Chief of the Criminal Division in the United States Attorney's Office in the Southern District of Florida. He had appeared before Judge Hastings as a prosecutor in a complex case involving sensitive information. He later became a defense attorney in private practice and has appeared before Judge Hastings in that capacity also. He will be called to testify concerning his observations and opinion of Judge Hastings and concerning the judge's reputation among experienced federal trial practitioners.

Estimated time for direct examination: **Ten minutes**

20. **Johnny Rivero**,* c/o Federal Bureau of Investigation, 16320 N.W. 2nd Avenue, North Miami Beach, Florida 33169.

Mr. Rivero was an undercover informant in the 1985 investigation that led to the wiretap. He participated in numerous meetings with Mayor Clark and Peter Ferguson as well as Kevin Gordon. He testified concerning some of these matters before a special committee of the Judicial Council of the Eleventh Circuit in Atlanta. He will be called so that he might be more fully examined concerning events that bear upon Mayor Clark's credibility and other matters.

Estimated time for direct examination: **One hour**

21. **Kenneth Robinson**, 902 3rd St. N.W., Washington, D.C.

Mr. Robinson is a criminal defense lawyer in Washington, D.C. In late May 1981, Dredge tried to retain Mr. Robinson to "fix" Dredge's case in Baltimore, a service for which Dredge was willing to pay handsomely. Mr. Robinson refused. At the time Mr. Robinson represented former Congressman Jenrette in one of the Abscam cases. Reid Weingarten was one of the prosecuting attorneys in that case. In the wake of the disclosures that followed Borders's arrest, Mr. Robinson became concerned that Mr. Weingarten had tried to set him up. Mr. Robinson will be called to testify about his dealings with Dredge and related matters.

Estimated time for direct examination: **Twenty minutes**

22. **The Honorable Edward Rogers**, Palm Beach County Courthouse, Room 406, West Palm Beach, Florida.

Judge Rogers was a state court judge. He was a classmate of Hemphill Pride and Judge Hastings in law school and had known them both since. He testified at the 1983 trial concerning the relationship between the two men and matters bearing upon the credibility of each. He will be called to provide similar testimony in this case.

Estimated time for direct examination: **Fifteen minutes**

23. **Edward Shohat**, Bierman, Shohat, & Loewy, P.A., Courthouse Square, Suite 1730, 175 N.W. 1st Avenue, Miami, Florida 33128.

Mr. Shohat is a senior member of the Miami bar who has practiced in the federal court there for more than fifteen years. He has appeared regularly before Judge Hastings and the other judges of that court. He is familiar with the judge's reputation among other experienced practitioners in that court. He will be called to testify concerning those matters.

Estimated time for direct examination: **Ten minutes**

24. **Roger Spaeder**,* Zuckerman, Spaeder, Goldstein, Taylor & Kolher, 1201 Connecticut Avenue, N.W., Washington, D.C. 26038.

Mr. Spaeder was one of the attorneys whom Dredge ultimately retained to represent him. Nesline brought Dredge to Spaeder's office in early July 1981. Spaeder participated in the plea negotiations on Dredge's behalf. He will be called to testify concerning statements made by Justice Department representatives at that time and other matters.

Estimated time for direct examination: **Twenty minutes**

25. **Lanny Sumpter**, 650 S. Dale Mabury, Tampa, Florida.

Mr. Sumpter was the executive director of Metro-Miami Action Plan ("MMAP") in 1985. He was present at the conference on September 6, 1985, when Judge Hastings spoke. Mr. Sumpter has never been called to testify. He will be called to testify about such recollections as he still may have of that day and other relevant matters.

Estimated time for direct examination: **Twenty minutes**

26. **Patricia Thomas**, 19 W. Flagler Street, Suite M106, Miami, Florida 33130.

Ms. Thomas was a staff person at the MMAP conference on September 6, 1985. Ms. Thomas has never been called to testify. She will be called to testify about such recollections as she still may have of that day and other relevant matters.

Estimated time for direct examination: **Twenty minutes**

27. **Flauren Joyette Vickers**, **f/k/a Flauren Joyette Royals**, 19 West Flagler Street, Suite M106, Miami, Florida.

Ms. Royals was the MMAP staff member who made arrangements to take the judge from the podium, through the service area, to his car when he completed his speech on September 6, 1985. Ms. Royals testified in Atlanta and before the House that Judge Hastings did not go into the audience or talk to Mayor Clark after his speech on that day. She will be called to testify about these events.

Estimated time for direct examination: **Thirty minutes**

28. **Reid Weingarten**,* Steptoe & Johnson, 1330 Connecticut Ave. N.W., Washington, D.C.

Mr. Weingarten was a trial attorney in the Public Integrity Section of the Justice Department's Criminal Division. He was assigned to the case at the outset of the investigation in 1981 and made or participated in the major decisions made in the investigation and prosecution. He will be called to testify concerning those decisions and his role in the case.

Estimated time for direct examination: **One hour**

29. **Glenn Whittle**,* 1420 S.W. 82nd Avenue, Miami, Florida.

Mr. Whittle called FBI agent Tom Dowd sometime before July 23, 1985. According to Dowd, Whittle said that H. Paul Rico had suggested that Whittle call Dowd. According to Dowd, Whittle asked Dowd to verify whether the FBI had an investigation into the activities of Mayor Stephen Clark and Peter Ferguson. This occurred more than six weeks prior to the alleged wiretap disclosure on September 6, 1985. Mr. Whittle has never been called to testify. He will be called to testify here concerning these events and the sources and extent of his knowledge at that time.

Estimated time for direct examination: **Thirty minutes**

30. **Betty Williams**, 3317 Onyx Road, Miramar, Florida 33025.

Ms. Williams was Judge Hastings's secretary in 1981. She made his travel arrangements and was generally familiar with his activities and the activities in his chambers during that period. She testified concerning those events at the 1983 trial and before the Investigating Committee. She will be called to testify concerning her observations and records during that period in this case.

Estimated time for direct examination: **One hour**

B. Witnesses to be Presented Through Prior Testimony

In each instance, the original or best available copy of the transcript of the prior testimony to be offered through these witnesses is in the possession of the House managers. All this testimony comes from the record in *United States v. Hastings* or the transcript of the trial proceedings in *United States v. Borders*. Respondent intends to offer both these records into evidence in this case. Respondent requests that the committee ask the House managers to produce the original or best available copy of these records so that appropriate copies of the entire record and separate copies of the prior testimony of the witnesses identified below may be made.

1. **Benjamin Daniel Brown**, 7932 Orchid Street, N.W., Washington, D.C.

Mr. Brown was a deputy chairman of the Carter Re-election Campaign Committee and served on the Democratic National Committee. He testified at Borders's trial concerning Borders's role and influence in the Carter campaigns and administration and the uniform belief in his integrity among high government and political officials until his arrest on October 9, 1981. His testimony at that trial will be offered in this case.

2. **I. J. Cunningham**, Cross Roads Bldg., Suite 201, 1897 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409.

Mr. Cunningham is a former Vice-President of the National Bar Association who knew Borders. He testified at the 1983 trial concerning Borders's practices and eccentricities. His testimony at that trial will be offered in this case.

3. **Charles T. Duncan**, 1111 19th Street N.W., Washington, D.C.

Mr. Duncan is a Washington lawyer who knew Borders well. He testified at Borders's trial expressing his opinion and concerning Borders's reputation prior to October 9, 1981. His testimony at that trial will be offered in this case.

4. **Willie E. Gary**, Riverview Prof. Bldg. #200, 117 Seminole Street, Stuart, Florida 33494.

Mr. Gary is a lawyer who knew Borders. His testimony on one of Borders's eccentricities was proffered at the 1983 trial. His testimony at that trial will be offered in this case.

5. **Lisa Goldstein**, Public Guardian, Broward County Courthouse, 201 S.E. 6th Street, Ft. Lauderdale, Florida 33301.

Ms. Goldstein had preceded Jeffrey Miller as Judge Hastings's law clerk. She testified at the 1983 trial concerning the problems created when clerks left the judge's chambers without completing matters on which they had worked. Her testimony at that trial will be offered in this case.

6. **Mildred Hastings**, 5602 N.W. 206 Terrace, #867, Miami, Florida 33055.

Mrs. Hastings is Judge Hastings's mother. She testified at the 1983 trial concerning her telephone and other contacts with her son on October 9, 1981, and other matters. Her testimony at that trial will be offered in this case.

7. **Barbara Katzen**, Virtudes Street, Gables by the Sea, Florida 33156.

Ms. Katzen served as a law clerk in Judge Hastings's chambers. She testified and was cross-examined at the 1983 trial about a telephone call she received from him on October 9, 1981, and about other matters relevant to this case. Her testimony at that trial will be offered in this case.

8. **Carolyn Lewis**, 2920 W. Street, S.E., Washington, D.C. 20002.

Ms. Lewis was one of the coordinators of the dinner-cruise planned to honor Borders on October 9, 1981. She testified and was cross-examined at the 1983 trial concerning her contacts with the judge about the dinner-cruise and other matters. Her testimony at that trial will be offered in this case.

9. **Alvoyd Merritt**, deceased.

Mr. Merritt is Judge Hastings's uncle. The judge's mother called him on October 9, 1981, after she learned of Borders's arrest. Mr. Merritt went to the apartment where the judge and his mother lived. Mr. Merritt testified about the events and his observations that day. His testimony at that trial will be offered in this case.

10. **The Honorable James C. Paine**, 701 Clematis Street, West Palm Beach, Florida 33401.

Judge Paine was a judge for the Southern District of Florida in 1981. Judge Paine had hired Jeffrey Miller to be his law clerk effective October 1, 1981, upon the completion of Miller's one-year term in Judge Hastings's chambers. Judge Paine later agreed that Judge Hastings could keep Mr. Miller for the month of October so that Miller could complete his work on unfinished cases such as the *Romano* case. Judge Paine testified at the 1983 trial. His testimony at that trial will be offered in this case.

11. **Herman C. Perry**, 1221 Pine Street, Columbia, South Carolina 39204.

Mr. Perry had conversations with Hemphill Pride concerning Pride's intense desire to regain his license to practice law while Pride was in prison. The intensity of Pride's desire and the manner in which he communicated it to others have since emerged as facts of some significance. Mr. Perry testified at the 1983 trial. His testimony at that trial will be offered in this case.

12. **Mildred Pride**, 50 Brickyard Condominium, Columbia, South Carolina.

Ms. Pride was Hemphill Pride's first wife. She testified and was cross-examined about matters that bore upon his credibility at the 1983 trial. Her testimony at that trial will be offered in this case.

13. **Shirley Pride**, 725 Cindy Drive, Columbia, South Carolina 29203.

Ms. Pride was Hemphill Pride's second wife. She and their son were with him at the L'Enfant Plaza on October 9, 1981. She testified at the 1983 trial that Hemphill Pride had *not* accompanied the judge back to his room after informing him of Borders's arrest, but had instead remained in their room for approximately fifteen minutes. She also testified about other matters that bore upon Pride's credibility. She was cross-examined at that trial. Her testimony at that trial will be offered here.

14. **Herbert O. Reid**, District Building, Room 520, 1350 Pennsylvania Ave. N.W., Washington, D.C. 20004.

Professor Reid had known Borders since he was a student. Professor Reid testified at Borders's trial concerning his own opinion of Borders and Borders's reputation prior to his arrest on October 9, 1981. His testimony at that trial will be offered in this case.

15. **Frank Romano**, deceased.

Frank Romano was the defendant whom H. Paul Rico purported to impersonate. There was a picture of the real Frank Romano in the file for *United States v. Romano* that was in Judge Hastings's chambers. Mr. Romano was called at trial so the jurors themselves could assess the credibility of the government's claim that Rico was chosen because he looked like Frank Romano. Mr. Romano's testimony will be introduced here so that the Senate is aware that the jury had this evidence available to it.

16. **Shirley Ross**, present address unknown.

Judge Hastings took a taxi from National Airport to Ms. Ross's apartment in Washington after he arrived on the evening of September 11, 1981. Ms. Ross accompanied him to the Sheraton where they dined. Ms. Ross testified at the 1983 trial to establish how the judge spent his time after he arrived at National Airport that evening. Her testimony at that trial will be offered in this case.

17. Simon Stephen Selig, III, Selig Enterprises, 1100 Spring Street, Suite 550, Atlanta, Georgia 30367.

Mr. Selig was a deputy assistant to President Carter and a ranking official in the reelection campaign. Borders participated in those activities. Mr. Selig testified at Borders's trial expressing his opinion and concerning Borders's reputation among high public officials prior to October 9, 1981. His testimony at that trial will be offered in this case.

18. Paul Snead, Marker and Williams, Altamonte Springs, Florida 32701.

Mr. Snead knew both Judge Hastings and Pride. He testified at the 1983 trial that in September 1981 Judge Hastings had discussed writing a letter on Pride's behalf. His testimony at that trial will be offered in this case.

19. Ralph Stevenson, 1214 Henderson Street, Columbia, South Carolina 29201.

Mr. Stevenson was a lifelong friend of Hemphill Pride's. He testified at the 1983 trial concerning Pride's desire to gain readmission to the bar and his efforts to that end even while he was still in prison. His testimony at that trial will be offered in this case.

20. Delano Stewart, 400 E. Buffalo Avenue, Tampa, Florida 33601.

Mr. Stewart was an attorney who knew Judge Hastings and Borders. He testified at the 1983 trial about Borders's practices and eccentricities and about efforts Judge Hastings had made on Pride's behalf. His testimony at that trial will be offered in this case.

21. **Barbara Whiting-Wright**, f/k/a Barbara Whiting, 2831 Hillcrest Drive, S.E., Washington, D.C. 20020.

Ms. Whiting-Wright was affiliated with the National Bar Association and, with Carolyn Howard, planned and coordinated the arrangements for the dinner-cruise honoring Borders on October 9, 1981. She engaged in correspondence and conversations through which Judge Hastings agreed to act as a sponsor for the event and to present Borders with an award. Her testimony at that trial will be offered in this case.

22. **Dudley Williams**, 1621 New Hampshire Avenue, Washington, D.C. 10009.

Mr. Williams practiced law with Borders prior to Borders's arrest in 1981. He testified at the 1983 trial concerning some of Borders's practices and eccentricities. His testimony at that trial will be offered in this case.

C. House Witnesses to be Called or Recalled During Respondent's Case

1. **William Dredge*** [Previously served] (address unknown)

Mr. Dredge was the drug-dealer who provided information that led to Operation Apple Eye, and he assisted in its implementation. Dredge dealt with Borders and others and knew Borders was operating as a rainmaker. The prosecutors represented that Dredge was not a material witness in 1983, and the trial court denied Judge Hastings's entreaties that he be produced. He must be called and examined thoroughly in this case.

Respondent anticipates that it will be necessary to recall Mr. Dredge to confront him after respondent has introduced evidence that conflicts with Mr. Dredge's anticipated testimony.

Estimated time for direct examination: **One hour**

2. **Albert Blocker**, L'Enfant Plaza Hotel, Washington, D.C.

Mr. Blocker was an auditor at the L'Enfant Plaza Hotel. He testified at the 1983 trial concerning the Hotel's records and billing procedures. Respondent will have to recall Mr. Blocker briefly to present his evidence in an orderly manner.

Estimated time for direct examination: **Five minutes**

3. **H. Paul Rico**,* Miami Jai Alai, 3500 N.W. 37th Avenue, Miami, Florida 33142.

In addition to his participation in the 1981 investigation and the 1983 trial, Mr. Rico has been identified as the source through which Mayor Stephen Clark may have obtained information that he was involved in matters that were under investigation by the FBI. As a result of the information, the FBI received inquiries on the mayor's behalf in July 1985, almost two months before the alleged disclosure in September 1985.

Mr. Rico has thus been identified as a potential source of Mayor Clark's information that the FBI was investigating Kevin Gordon's and the mayor's involvement in Hialeah zoning corruption. Respondent may have to recall Mr. Rico if necessary to present his evidence in a coherent manner or if compelled to do so by limitations on the cross-examination of Mr. Rico during the House case.

Estimated time for direct examination: **Thirty minutes**

D. Other Witnesses Whose Testimony May Be Made Necessary

Respondent has allocated time for presentation of live testimony in his case in chief cautiously in order to assure he has the time necessary for proper cross-examination and for calling witnesses whose testimony is made necessary by developments at the evidentiary hearings. The committee should understand the kinds of developments that are likely to require respondent to specify additional witnesses.

1. **The House Theory of the Case**. The House managers appear uncertain whether they intend to prosecute the case on the theory that a conspiracy was formed "sometime in the first half of 1981," as alleged in Article I, or "on or about September 10, 1981," as alleged in the 1981 indictment. Their Amended Final Pretrial Statement and their list of exhibits suggested their emphasis was to be on the latter theory. The latest revisions and additions suggest that the deposition of a well-coached William Dredge has led them to revert to the alternative theory. The two theories are inconsistent, and neither will wash. Nonetheless, respondent cannot determine who among the available witnesses should be

called for live testimony until the House managers have committed themselves to the theory to which he is to respond.

2. Of Experts and Counter-Experts. The House persists in its view that Dr. Shuy's linguistic expertise should be shared with the Senate. Respondent believes that such testimony would be improper. The need for respondent to call and allocate some time to a counter-expert depends upon whether (a) the committee permits Dr. Shuy to testify and (b) if so, the extent to which Dr. Shuy is candid about the limited nature of the claims he can make under the standards of his field.

The House managers' pretrial statement and exhibit list suggest additional experts may be necessary. The forensics experts (Mssrs. Canter and Attenburger) have never been called to testify in any forum insofar as respondent is aware. Ms. Avery must be examined concerning the extent of her qualifications, and the scope of the opinions she is willing or permitted to express must be determined. The House managers apparently retain the extraordinary view that a conclusory memorandum concerning a carefully camouflaged polygraph examination may be admissible in evidence. Respondent cannot fairly assess the need for counter-experts in these fields until the committee has determined which of the House's experts will be permitted to testify and respondent has heard and assessed the significance of their testimony after cross-examination.

3. **The Unexamined Witnesses**. Many of the House witnesses have never been examined on behalf of respondent. Respondent has never examined some of the witnesses he must now call. Respondent cannot fairly decide which additional witnesses should be called or allocated time until these witnesses have been examined and stated their recollections under oath.

4. **Respondent's On-going Inquiry and Review**. Respondent's counsel are continuing their inquiries and their review of documents supplied. As the House case develops and these inquiries and reviews continue, the relevance and necessity for testimony from additional witnesses is likely to emerge.

Respondent will specify additional witnesses as the necessity emerges. Counsel does not anticipate that the additional witnesses called will require any additional time beyond that allocated to respondent or that locating these witnesses and obtaining their presence will inconvenience the hearing schedule established by the committee.

E. Subpoenas *Duces Tecum* Requested

Respondent requests that the committee issue and serve subpoenas *duces tecum* addressed to each of the persons identified in the Specification for Subpoenas *Duces Tecum* (the "Specification") submitted as Addendum I to this pretrial statement. Respondent requests that each subpoena command the addressee or, where appropriate, his designee to produce forthwith the originals or certified, clear, and unredacted copies of each of the documents described under his name in the Specification. With one exception, described below, respondent has confined his requests at this time to memoranda and documents prepared or approved by persons who have been named on the parties' witness lists for presentation of live testimony. These documents constitute or contain prior statements or adopted statements made by witnesses in this proceeding. The documents must be produced to enable respondent to prepare and conduct proper examination and cross-examination of these witnesses.

The subpoenas also requests the unredacted copies of the reports prepared by the Justice Department and the FBI concerning what Acting Associate Attorney General Joe D. Whitely characterized as "a serious and regrettable leak of confidential information" immediately after Borders's arrest. These reports are necessary for two reasons. First, the persons responsible for that leak may (or are likely to become) witnesses in this case. The fact that they made an improper disclosure would bear upon their biases, and the vigor and candor with which the Justice Department and the FBI dealt with the breach would bear upon its biases toward Judge Hastings and thus the credibility of the evidence it gathered. Second, the vigor and methods employed in that investigation will provide a proper basis for comparison in assessing the credibility of the FBI's claim that it conducted proper investigation into the Mayor Clark allegations when it was Judge Hastings who was accused of improperly disclosing confidential information.

III. Exhibits

Respondent will submit a numbered list of the exhibits he presently intends to offer in evidence as Addendum II to this pretrial statement as soon as possible. These will cause neither surprise nor delay because respondent does not presently intend to offer any exhibits other than exhibits obtained from the House, or pursuant to discovery allowed, on subpoenas issued by the committee. The original or best available copy of most of these exhibits is in the possession of the House or of the Justice Department and its Federal Bureau of Investigation. Respondent will submit copies, where feasible, of those exhibits for identification and for review by the House managers. He requests the assistance of the committee and its staff in obtaining and reproducing the originals or the best available copies for inclusion in the record. This practice was adopted and the assistance was extended by the Rule XI committee in the *Claiborne* hearings[6]

Respondent anticipates that his counsel will identify additional exhibits as their document review continues, as documents are produced pursuant to this committee's subpoenas, and as information is developed through cross-examination of House witnesses. He will submit supplemental lists promptly as such additional exhibits are identified.

---

[6] *See* 2 Reams & Gray, *The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne at 110 (directing parties and staff to perform similar duties). In this and future memoranda, unless otherwise noted, we will cite materials from the Claiborne impeachment as reproduced in the Reams and Gray compilation as "Claiborne Proceedings" -- e.g. 2 Claiborne Proceedings at 110.*

IV. Prior Testimony and Related Matters

In order to comply with the Impeachment Trial Committee's rulings, respondent has been compelled to revise substantially his position on the use of prior testimony. Without waiving his principled objections to these rulings, respondent has now adopted a position that has been made necessary to assure that there is a full record available for those Senators and others who may review it. We develop respondent's views and respond to the managers' proposals below.

A. The Record in United States v. Hastings

In *Claiborne*, the House moved that extensive testimony given and exhibits admitted at the criminal trial of Judge Claiborne be admitted as substantive evidence.[7] The House argued that:

> The testimony of each of these witnesses was under oath. It was subject to full cross-examination by the defense. As a result, the acceptance of prior testimony will not work any unfairness to Judge Claiborne.[8]

The Rule XI committee in that case granted this motion and directed its clerk to work with counsel for the parties to obtain the best available copy of these materials for reproduction as part of the record.[9] This was done, and the committee's ruling was accepted by the Senate.

---

[7] 2 *Claiborne Proceedings* at 287 (motion reproduced).

[8] 2 *Claiborne Proceedings* at 387 (memorandum in support of motion).

Although we believe that that ruling was an early and unfortunate step down a very slippery slope, the constraints imposed by the Impeachment Trial Committee in this case require that we seek similar relief here. Accordingly, we request that the committee permit either party to introduce testimony and exhibits admitted at the trial of *United States v. Hastings*, No. 81-596-Cr. ETG (S.D. Fla.), as substantive evidence in this case. This request is in addition to respondent's request that the committee admit the entire record of the proceedings in that case as evidence here for two additional purposes.

First, this case is a case of first impression. The Senate has undertaken to retry an acquitted judge. The fact that the Senate was unwilling, as a matter of law, to give preclusive effect to that verdict, standing alone, does not undermine the view that every Senator is entitled, after the hearings in this case are complete, to individually decide whether and what weight should be accorded the verdict of a jury of twelve citizens who heard the witnesses testify, observed their demeanor under examination and cross-examination, and heard the arguments of counsel and deliberated with the evidence fresh in mind.[10] As part of that deliberation, each Senator should have available a record that will make it possible for him or her to assess the extent to which the House has, in fact, presented material evidence that was not available to the prosecutors at the time of the 1983 trial. The complete record of the prior trial should be available as part of the record of this trial for that purpose and such others as it may properly serve.

---

[9] *Id.* at 110.

[10] *See, e.g.,* 135 Cong. Rec. S. 2804 (Mar. 16, 1989) (remarks of Senator Specter).

Second, the arguments advanced by the House make it important that the record of the trial be available to every Senator for a further reason. The argument has been strenuously advanced that the fact that each Senator must decide upon the standard of proof he or she will require the House to satisfy distinguishes the trial of an impeachment from a criminal trial in which the jurors are instructed that they may only convict if the prosecution has proved the case beyond a reasonable doubt. Implicitly, and often explicitly, the House would have the Senate believe that the government *just missed* in 1983 -- that respondent was acquitted only because their proof did not *quite place* the issue beyond a reasonable doubt. That view has been repudiated by the only juror whose views are directly recorded. In her words, the government's case consisted of "[c]ircumstantial evidence that was shaky at best and an investigation that did not finish. . . ."[11] The House's arguments have made it necessary, however, that the entire record be admitted in order to make it possible for each Senator to formulate his or her own view on the question.

---

[11] *See* S. Rep. 1, 101st Cong., 1st Sess. at 143 (transcript of videotaped views of juror presented to Senate Committee on Rules and Administration).

B. United States v. Borders

The ruling in *Claiborne* would not, by its terms, extend to the record in *United States v. Borders*, No. 82-75-A (N.D. Ga.). Neither respondent nor his counsel participated in that trial and the testimony presented was not "subject to his counsel's cross-examination."[12] It was, however, subject to examination and cross-examination by the government. Respondent submits the transcript of the testimony given, exhibits admitted, and the statement of the presiding judge at sentencing must be admitted into evidence at this trial to assure a record that is adequate for the Senate's review for two reasons.

First, the prior testimony given on Borders's behalf established beyond doubt that he had effectively concealed his corrupt side from friends and associates of considerable sophistication, including those who held high political office and other positions of responsibility and trust. The government had the opportunity, but made no attempt to challenge this evidence, and the presiding judge, the late Edward Thaxter Gignoux, specifically found that there were two William Borders. One was the Borders who enjoyed an unquestioned reputation among his professional associates, political acquaintances, friends, and family prior to the disclosure of his 1981 scheme. The other was the Borders revealed by the record in that case.[13]

---

[12] *Compare* 2 *Claiborne Proceedings* at 110 (rationale given by Chairman Mathias).

Clearly that fact is relevant to establish that Judge Hastings was among the professional associates, political acquaintances, and friends from whom Borders so successfully concealed his darker side. The testimony and evidence introduced at that trial places the underlying fact beyond dispute. The fact that the government had a fair opportunity to cross-examine these witnesses and challenge the conclusion precludes any complaint by the House managers to the use of such prior testimony.[14] Although respondent continues to believe that the Constitution mandates live testimony, under the rulings adopted by this committee, he has concluded that this point can only be established by the prior testimony, including the statements of the late Judge Gignoux at sentencing.

Second, respondent submits that the entire available transcript of the proceedings at trial and sentencing and the exhibits admitted in *United States v. Borders* should, in any event, be made part of the record here. The fact that Borders was convicted has been cited as further evidence that the case against Judge Hastings was "strong" -- that the judge was only acquitted because the government could not place the issue beyond reasonable doubt at his trial.

---

[13] *See* "Transcript of Extract from Sentencing Containing Comments of the Court and Formal Imposition of Sentencing," (*United States v. Borders,* at 2-3 (May 7, 1982).

[14] *Compare* 2 *Claiborne Proceedings* at 387 (cross-examination by defense avoids any unfairness to defense from use of prior testimony).

Respondent has elsewhere developed the fallacy in the logic of this argument.[15] The fact that Borders was tried separately made it possible for the government to present the circumstantial case suggesting the judge was a participant without rebuttal or explanation. Moreover, the jury in that trial would have had to acquit an obviously guilty Borders if it had not accepted the prosecution's view. Nonetheless, the practical effect of an argument from Borders's conviction cannot be discounted. For that reason, the evidence presented there should also be available for review by those Senators who are concerned with this issue.

C. Prior Testimony Before the Investigating Committee

Without waiving his objection of the use of prior testimony on principle or to the procedures adopted that have forced such use here, respondent waives any specific objection to the use of the testimony given by airline records witnesses Lowe, Washington, and Boone. Respondent objects to the use of any other testimony taken before the Investigating Committee on two general grounds -- such use should be foreclosed by the committee's ruling on the House's Motion *in limine* and such use would in any event be precluded by the proper application of the rule against hearsay and other considerations of fairness.

In ruling on the House's Motion *in Limine*, the committee denied the motion as it bore upon possible improper motives and biases of Justice Department and FBI officials. That decision was based, in significant part, on the understanding that the House proposed to call these officials and rely upon evidence they had generated and gathered, thereby placing their credibility and the credibility of the evidence they had compiled in issue.[16] The committee, however, granted the House's motion with respect to the judicial branch officials because the issues germane to this impeachment did not concern "the conduct of members of the judicial branch or persons employed by it."[17]

---

[15] *See Memorandum in Support of Motions to Dismiss Articles I Through XV Without Trial Based Upon 1983 Jury Verdict and Lapse of Time, S. Doc. 4, 101st Cong., 1st Sess. at 34.*

Unless the committee is prepared to reverse that ruling as it bears upon the Investigating Committee and its investigators, the House managers cannot properly be permitted to introduce evidence gathered at those proceedings. If the House is permitted to use uncross-examined testimony from those proceedings, the credibility of that evidence will be squarely in issue. Central to an assessment of the credibility of that evidence will be the motives and biases of those who selected the persons to testify, prepared them for that testimony, and determined the areas that should be explored and developed and those that should not. Simply stated, the House cannot have it both ways -- either the credibility of that investigation is in issue or it is not.

All but one of those witnesses is, in any event, an available witness, and the use of their prior testimony to establish the truth of matters asserted would clearly violate the rule against hearsay. Moreover, such use would be unfair.

---

[16] Impeachment Trial Committee: Disposition of Pretrial Issues [First Order] at 3-4 (April 14, 1989).

[17] *Id.* at 4-5.

The House seeks to conserve the time allocated to it by using prior testimony gathered by its predecessors-in-interest through the exercise of the subpoena power. Permitting them to do so would place upon respondent three unfair burdens. It would prevent respondent from cross-examining witnesses at the point their testimony was presented and thus preclude the development of an orderly record during the House's case in chief. Second, it would place upon respondent the burden of calling them and using time allocated to his case. Third, it would enable the House to impede an orderly cross-examination by insisting that the requisite showing of adversity or hostility had not been made. None of these burdens is fair, and the procedure is not conducive to the development of an orderly record for the Senate.

In the alternative, respondent submits that, if any prior testimony and exhibits included in the record of the Investigating Committee are admitted on the basis of that record, the whole record of the proceedings before the Investigating Committee should be admitted and made part of the record here. That record would show that members of the committee lied and browbeat witnesses to obtain evidence

---

18. *See* Investigating Committee Transcript at 38-40 (May 22, 1985) (judges on committee misrepresenting to Dredge that Investigating Committee had power to detain him if he insisted on presenting his objections to their subpoena to the court's for determination).

it sought without regard to the rights of the witness or the object of their investigation. If the record is to include any part of the evidence compiled in such a manner, it should include it all, and respondent so requests.

D. Prior Testimony Before the Grand Jury

The House's attempt to introduce the testimony given by Daniel Simons before Grand Jury 81-1 (Miami) must be rejected on grounds of fundamental fairness, quite apart from the issues its use would raise under the hearsay rule. The Senate may have ruled that the lapse of time did not, as a matter of law, foreclose a second trial more than seven years after the fact. That decision cannot, however, excuse this committee from considering the requirements of fairness in assessing whether evidence such as this should be admitted.

The prosecutors called Mr. Simons before the Grand Jury in 1981. The prosecutors chose not to call Mr. Simons as a witness at the 1983 trial. By so doing, they avoided the need to disclose Mr. Simons's grand jury testimony to Judge Hastings and deprived him of the opportunity to confront Mr. Simons at trial so that a complete and reliable record of his recollections and their basis might have been developed through cross-examination before he was stricken with leukemia.

---

19. *See, e.g.,* XX *id.* at 204-12 (Oct. 24, 1985) (browbeating lawyer to induce him to turn over materials without adjudication of attorney-client privilege).

The managers' attempt to resuscitate this transcript now is nothing more than an attempt to profit from the inordinate delay and the prosecutors' decision to withhold this transcript from Judge Hastings at trial. It is one thing to argue that essential testimony given before a grand jury should be admitted at the resulting criminal trial where the witness has become unavailable in the interim, in circumstances implicating the accused.[20] It is quite another thing to suggest that such testimony may be used at a second trial conducted in another branch more than seven years after the fact simply because the respondent's accusers enjoyed a unilateral power to gather and preserve testimony, a power that has been denied respondent throughout.

Respondent also takes the view that, if any testimony from Grand Jury 81-1 is to be admitted here, then in fairness all the testimony so taken should be admitted. To the extent the Senate is asked to assess the reliability of the testimony Mr. Simons gave there, it should also have available the grand jury testimony of all witnesses who testified then. Only by comparing the grand jury testimony of other witnesses as it evolved over the various trials and hearings could the Senate estimate the extent to which Mr. Simons's unexamined views should be credited now. Moreover, the entire record of those grand jury proceedings might further aid the Senate in understanding the essential unfairness of the investigations that generated the accusations in the first place. Accordingly, respondent requests that the entire record of Grand Jury 81-1 be made part of the record here if Mr. Simons's uncross-examined testimony is admitted.

---

[20] *See, e.g., United States v. Barlow*, 693 F.2d 954, 964-65 (6th Cir. 1982), *cert. denied*, 461 U.S. 945 (1983); *United States v. West,* 574 F.2d 1131, 1134-38 (4th Cir. 1978); *United States v. Carlson*, 547 F.2d 1346, 1354-60 (8th Cir. 1976), *cert. denied*, 431 U.S. 914 (1977); *compare contra, United States v. Thevis,* 665 F.2d 616, 627-30 (5th Cir.), *cert. denied,* 459 U.S. 825 (1982).

V. Legal Principles

The House has accused respondent of sixteen specific offenses. In respondent's view, the burden now rests squarely upon the managers to prove them. Until the trial of Harry Claiborne, this is the standard the Senate required the House to meet this standard in every case. The rules of evidence were strictly applied. The Senators served as impartial jurors and adjudicated the offenses carefully. The House did not fare particularly well under that standard: The Senate voted to acquit at least as often as it voted to convict.

The standards applied and the protections they accorded accused officials, particularly accused judges who cannot command the political support available to executive officers, were significantly diluted by the procedures adopted to deal with the perceived need to remove a *convicted* and *incarcerated* Judge Claiborne as rapidly and simply as possible. The House now seeks to consolidate its position by insisting that similar standards and procedures are suitable for cases involving an *acquitted* judge. To date, the House's views have largely prevailed.

The House has in effect invited the Senate to accept a modified form of joint-address. In the House's view, if sufficient political momentum can be generated to induce the House to declare that a judge is unfit to remain in office and can be sustained at the level necessary to persuade two-thirds of the Senators present to concur, then the judge should be removed. In this view, rules of evidence, technical requirements of pleading and proof, burdens and standards of proof are but forms to be manipulated to maintain the appearance of fairness while minimizing the inconvenience and cumbersomeness of the proceedings.

In respondent's view, the positions advocated by the House are pernicious and can only undermine the structure of our government. He has advocated and will continue to advocate the principles he believes the Senate should apply. At the present stage, however, he can think of little he could add to what has gone before that might usefully aid the committee in the conduct of the hearings upon which it is about to embark. He will, of course, develop his views on specific issues as they arise.

Respectfully submitted,

Terence J Anderson

Terence J. Anderson

Principal Counsel to
United States District Judge Alcee L. Hastings

July 7, 1989

ADDENDUM A

SUBPOENAS *DUCES TECUM* REQUESTED

The Honorable Richard L. Thornburgh, Attorney General of the United States, United States Department of Justice, Washington, D.C., or **designee**.

1. Prosecution memorandum - William A. Borders, Jr. and Alcee L. Hastings dated December 1, 1981 from Reid H. Weingarten, Attorney, and Robert I. Richter, Assistant Chief for Operations, Public Integrity Section, Criminal Division, to Gerald E. McDowell, Chief, Public Integrity Section, Criminal Division.

2. All memoranda written or adopted by Reid Weingarten or Robert I. Richter concerning the investigation, prosecution, trial, or post-trial proceedings concerning respondent.

3. A file maintained by former Assistant United States Attorney Steven Allen of the District of Maryland concerning William Dredge and containing Mr. Allen's notes concerning his meetings with Reid Weingarten, William Dredge, and others concerning Mr. Dredge's involvement in the investigation of William A. Borders and Judge Hastings and Mr. Dredge's plea negotiations, plea agreement and sentencing. According to Mr. Allen this file was transmitted to the Department of Justice for preservation and future use at the suggestion of United States District Judge Frank Kaufman of the District of Maryland.

4. Memorandum dated May 11, 1982, from David I. McKeon, Supervisory Attorney, Special Investigations Unit, Office of Professional Responsibility, to Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility concerning unauthorized Disclosure of Information to the Media relative to William A. Borders/Alcee L. Hastings bribery conspiracy investigation.

The Honorable William S. Sessions, Director, Federal Bureau of Investigation, United States Department of Justice, Washington, D.C., **or designee**.

1. Teletype from FBI Miami to Director dated May 1, 1981, setting for Miami Division's position relative to prosecution of Judge Alcee L. Hastings for Disclosing Title III information bearing the file designation 195A-22.
2. Letter dated July 29, 1982, from the Washington Field Office to the Director believed to be captioned "DOJ/FBI Investigation of Unauthorized Disclosure of Information Concerning Borders-Hastings Case."

Terence J. Anderson

c/o The University of Miami
School of Law
Coral Gables, FL 33124-8087
(305) 284-2971

July 7, 1989

Representative John Bryant
c/o Impeachment Trial Staff
Room H2-361, House Office Bldg.
Annex #2
Washington, D.C. 20515

Dear Mr. Bryant:

I write to report the status of respondent's discovery:

1. At the time of the House subcommittee hearings, Judge Hastings delivered to me a short transcript his court reporter had prepared of a telephone conversation between Judge Hastings and Eric Holder. I have been unable to locate this transcript in my Miami files and will look for it in Washington, D.C. In the meantime, I have asked the court reporter to search for the original stenotype notes.

2. You mentioned a tape recording of a conversation between William Dredge and David Helman, a private investigator retained by Ms. Williams to aid in preparing for the judge's 1983 trial. Judge Hastings has confirmed that he received a transcript of such a call. Judge Hastings's and Ms. Williams's files and records from the trial were stored in Ms. Williams's garage and were destroyed by vandals some years ago. I have contacted Mr. Helman who reports the tape was erased. He has, however, located his transcription of the call, and I expect to obtain and bring a copy to Washington with me.

3. Depending upon respondent's decisions concerning expert witnesses, there may be one additional document which should be produced. If a decision that would require its production is made, I shall submit it immediately.

I am not aware of any other documents in respondent's possession or control that are properly producible on discovery.

Sincerely,

Terence J. Anderson

cc: Impeachment Trial Committee

IN RE: TESTIMONY OF WILLIAM A. BORDERS, JR.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS The United States Senate Washington, D.C. 20510, Applicant.	)	Misc. No. 89-_____

APPLICATION FOR ORDER IMMUNIZING TESTIMONY AND OTHER INFORMATION PROVIDED BY WILLIAM A. BORDERS, JR.

1. The Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings applies to this Court for an order, pursuant to 18 U.S.C. §§ 6002 and 6005, immunizing, from use in prosecutions, testimony and other information provided by one of its potential witnesses, William A. Borders, Jr., at proceedings of the Impeachment Trial Committee.

2. The presiding officer of the Senate has appointed, pursuant to Senate Resolution 38, 101st Congress, and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Impeachment Trial Committee to receive evidence and take testimony on the articles of impeachment against Judge Alcee L. Hastings at such times and places as the committee may determine. A copy of Senate Resolution 38 as agreed to on March 16, 1989, is attached as Exhibit A; a copy of Impeachment Rule XI is attached as Exhibit B.

3. On June 7, 1989, by a vote of nine of its twelve members, the Impeachment Trial Committee adopted a resolution directing the Senate Legal Counsel to apply for an order immunizing testimony and other information provided by the witness at its proceedings. The committee's resolution is attached as Exhibit C.

4. It is anticipated that the witness would invoke his constitutional privilege against self-incrimination if subpoenaed to testify.

6. In accordance with 18 U.S.C. § 6005, we notified the Attorney General on June 8, 1989, of the Impeachment Trial Committee's intention to request this order. A copy of the notice to the Attorney General is attached as Exhibit D. A certificate of service of Exhibit D is attached as Exhibit E.

7. On June 9, 1989, the Attorney General's designee waived the Attorney General's statutory right to a ten-day waiting period between notification and the filing of this application, and waived the Attorney General's right to seek a limited deferral of the issuance of an immunity order. A copy of the letter from the Department of Justice containing these waivers is attached as Exhibit F.

Wherefore, the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings respectfully requests that this Court issue an order immunizing from use in prosecutions testimony and other information provided by William A. Borders, Jr., at proceedings of the Committee.

Respectfully submitted,

Michael Davidson
Senate Legal Counsel

Ken U. Benjamin, Jr.
Deputy Senate Legal Counsel

Morgan J. Frankel
Assistant Senate Legal Counsel

642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435

Counsel for Impeachment Trial Committee
on the Articles Against
Alcee L. Hastings

Of Counsel:

Elaine W. Stone
Mark A. Klugheit

Dated: June 14, 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE
ON THE ARTICLES AGAINST
JUDGE ALCEE L. HASTINGS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 89-____

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR ORDER IMMUNIZING TESTIMONY AND OTHER INFORMATION PROVIDED BY WILLIAMS A. BORDERS, JR.

The Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, appointed pursuant to Senate Resolution 38 of the 101st Congress and Rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, is applying to this Court for an order immunizing testimony and other information which may be provided to the committee by William A. Borders, Jr. The application is presented pursuant to 18 U.S.C. § 6005, which provides, in relevant part:

> § 6005. Congressional proceedings.
>
> (a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee ... of either House, ... a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such individual to give testimony or provide other information which he refuses to

> give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.
>
> (b) Before issuing an order under subsection (a) of this section, a United States district court shall find that--
>
> (1) * * * *
>
> (2) in the case of a proceeding before a committee ... of either House of Congress ... the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee; and
>
> (3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order.
>
> (c) Upon application of the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

This law provides the mechanism by which a witness before a congressional committee receives "use immunity" for testimony. The immunized witness remains subject to prosecution for the transactions about which he or she testifies if the government sustains the burden of proving at trial that it did not use the immunized testimony or its fruits in the prosecution. See Kastigar v. United States, 406 U.S. 441, 459-62 (1972). Because the court's inquiry on an application for an immunity order is narrow and its tests are mechanical, the application may be decided ex parte without a hearing. Ryan v. Commissioner of Internal Revenue, 568 F.2d 531, 540 (7th Cir. 1977), cert. denied, 439 U.S. 820 (1978).

Section 6005 sets out the two requirements for an immunity order, both of which have been met.[1] First, "in the case of a proceeding before a committee ... of either House of Congress ... the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee." 18 U.S.C. § 6005(b)(2). The Impeachment Trial Committee's resolution (Exhibit C to the application), shows that the Committee approved this request for an order by a vote of nine of its twelve members on June 7, 1989.

Second, on June 8, 1989, "the Attorney General was served with notice of an intention to request the order." 18 U.S.C. § 6005(b)(3); *see* Exhibits D and E to the application. On June 9, 1989, the Attorney General's designee waived both the requirement that the notice be served "ten days or more prior to the day on which the request for such an order was made," 18 U.S.C. § 6005(b)(3),[2] and the Attorney General's right to further delay under 18 U.S.C. § 6005(c). *See* Exhibit F to the Application.

---

[1] The Impeachment Trial Committee may apply for this order prior to summoning the witness to testify or provide information at one of its proceedings. *In re Application of United States Senate Permanent Subcommittee on Investigations (Cammisano)*, 655 F.2d 1232, 1236-38 (D.C. Cir.), *cert. denied*, 454 U.S. 1084 (1981).

[2] "[T]he Department [of Justice] may waive the ten-day notice requirement." *Cammisano*, 655 F.2d at 1236.

Accordingly, the Impeachment Trial Committee requests that the Court issue an order immunizing the testimony and other information which William A. Borders, Jr., may provide at proceedings of the committee.

Respectfully submitted,

Michael Davidson
Senate Legal Counsel

Ken U. Benjamin, Jr.
Deputy Senate Legal Counsel

Morgan J. Frankel
Assistant Senate Legal Counsel

642 Hart Senate Office Building
Washington, D.C. 20510
(202) 224-4435

Of Counsel:

Elaine W. Stone
Mark A. Klugheit

Dated: June 14, 1989

RECEIVED JUN 2 1 1989

FILED

JUN 20 1989

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE
ON THE ARTICLES AGAINST
JUDGE ALCEE L. HASTINGS,

Applicant.

Misc. No. 89-129-LFO

ORDER

Upon consideration of the application by the United States Senate's Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings for an order granting immunity to William A. Borders, Jr., and compelling his testimony, it is this 19th day of June, 1989, hereby

ORDERED: that a hearing shall be held in this matter on June 26, 1989, at 1:45 p.m. in Courtroom No. 3.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

Applicant.

Misc. No. 89-129 LFO

OPPOSITION OF WILLIAM A. BORDERS, JR. TO APPLICATION FOR ORDER IMMUNIZING TESTIMONY AND OTHER INFORMATION

Now comes, William A. Borders, Jr., by and through his attorneys, respectfully opposing the application of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings for an order granting use immunity to him from prosecution which might result because of testimony given at the Hastings impeachment trial. The reasons offered in support of this Opposition are set forth more particularly below.

I. INTRODUCTION

On June 7, 1989, the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings (hereinafter "the Trial Committee") adopted a resolution instructing the Senate Legal Counsel to apply for an order, pursuant to 18 U.S.C. 6002 and 6005 granting use immunity to William A. Borders, Jr., a potential witness at the Hastings impeachment trial. *See* Exhibit A attached hereto.

In accordance with 18 U.S.C. 6005, the Trial Committee notified the Attorney General of its intention to request a use immunity order from the Federal District Court for the District of Columbia. This written notification to the Department of Justice is dated June 8, 1989. See Exhibit B Attached hereto.

On June 9, 1989, the Senate Legal Counsel received a letter from the Department of Justice which purported to waive the provision of 18 U.S.C. 6005(b)(3) and (c). In the signature position is the name "Carol T. Crawford, Assistant Attorney General." The name is in typeface. The letter is signed by "John Mackey." See Exhibit C attached hereto.

On June 14, 1989, the Trial Committee filed an application for an order granting use immunity to Mr. Borders were he to be called as a witness in the Hastings impeachment trial. On June 20, 1989, this Court issued an order requiring the parties to appear at a hearing on the matter.

II. ARGUMENT

A. Title 18 of the United States Code, sec. 6005 provides, inter alia:

> 6005. Congressional proceedings
>
> (a) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before either House of Congress, or any committee, or any subcommittee of either House, or any joint committee of the two Houses, a United States district court shall issue, in accordance with subsection (b) of this section, upon the request of a duly authorized representative of the House of Congress or the committee concerned, an order requiring such

> individual to give testimony or to provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.
>
> (b) Before issuing an order under subsection (a) of this section, a United States district court shall find that-
>
> * * * *
>
> > (2) in the case of a proceeding before a committee or a subcommittee of either House of Congress or a joint committee of both Houses, the request for such an order has been approved by an affirmative vote of two-thirds of the members of the full committee, and
> >
> > (3) ten days or more prior to the day on which the request for such an order was made, the Attorney General was served with notice of an intention to request the order[.]
>
> (c) Upon application to the Attorney General, the United States district court shall defer the issuance of any order under subsection (a) of this section for such period, not longer than twenty days from the date of the request for such order, as the Attorney General may specify.

The preceding statutory provisions govern grants of use immunity in cases where an individual may be called as a witness before a committee or subcommittee of the House or Senate or a joint committee of both Houses of Congress. The Trial Committee is a committee of the Senate and therefore comes within the purview of 6005. It is settled law that a request for use immunity (18 U.S.C. 6002 - 6005) by a committee of a House of Congress is a constitutionally valid excercise of a statutory right. See In re Sealed Case, See 791 F.2d 179; 180-181 (D.C. Cir. 1986); cert denied, 479 U.S. 924 (1986); see also In re Sealed Case, 776 F.2d 335 (1985); see generally P.A. Robinson, Criminal Law Defenses, 205 (Vol. 2) at 482-488 (1984).

It is equally clear that a request for use immunity must strictly comply with the requirements of 18 U.S.C. 6005. The District Court "is to be a checkpoint" for ensuring that the procedural requirements of the provision have been met prior to the issuance of an order granting use immunity. Application of United States Senate Select Committee on Presidential Campaign Activities, 361 F. Supp. 1270, 1278 (1973). The Court must "scrutinize the record to make certain that the congressional request for an immunity order is jurisdictionally and procedurally well-founded, and that the Attorney General has been notified." Id.

There are two procedural requirements under 6005(b) which are applicable to the case sub judice: (a) the request for immunity must be approved by two-thirds of the full Committee (6005(b)(2)); and (b) at least ten days prior to the filing of the immunity request, the Committee must provide the Attorney General with notice of its intention to seek immunity for the witness (6005 (b)(3)). We submit that the Committee has failed to comply with the 10-day notice requirement set out in 6005 (b)(3). Thus, the application for the use immunity request is procedural defective and must be denied by the Court.

B. On June 8, 1989, the Trial Committee properly notified, Richard Thornburgh, the Attorney General of the United States, of its intention to request an immunity order. See Exhibit B attached hereto. On June 9, 1989, a letter purporting to waive 18 U.S.C. 6005(b) and (c) was sent to Michael Davidson, Senate Legal Counsel. This letter was not signed by the Attorney General personally. It was signed by John Mackey for Carol T. Crawford, Assistant Attorney General. On its face, 6005(b)(3) does not specifically provide for a waiver of the 10-day notice provision. However, the decisional law of this circuit has interpreted 6005(b)(3) to be directory and not mandatory. The Attorney General, in his discretion may waive the provision since the provision inures only to the benefit of the Department of Justice. In re Application of the United States Permanent Subcommittee on Investigations (Cammisano), 655 F. 2d 1232, 1235-1236 (D.C. Cir. 1981), cert. denied, 454 U.S. 1084 (1981); See Application of United States Senate Select Committee on Presidential Campaign Activities, 361 F. Supp. 1270 (D.D.C. 1973); see also Application of United States Senate Select Committee on Presidential Campaign Activities, 361 F. Supp. 1282 (D.D.C. 1973).

There is no discussion in the case law indicating the circumstances which would justify a designee of the Attorney General acting in his stead. In Application of the United tates Senate Select Committee on Presidential Campaign Activities, 361 F. Supp. 1282 (D.D.C. 1973), the Attorney General, represented by the Watergate Prosecutor, Archibald Cox, waived the 10-day notice requirement of 6005(b)(3) and the 20-day deferred period (6005(c)) without objection. Nevertheless, the letter of June 9, 1989, from the Department of Justice was signed "John Mackey for Carol T. Crawford, Assistant Attorney General." Neither John Mackey nor Carol T. Crawford is the Attorney General and it is impossible to say which is the designee. The June 9, 1989, letter does not satisfy the requirement of 6005(b)(3) even if we assume the designee of the Attorney General is Carol T. Crawford. The procedural defect remains since the letter was signed by John Mackey. There is absolutely no way to determine the identity or position of John Mackey. Does the law permit the assumed designee of the Attorney General, Carol T. Crawford, to delegate her responsibility or authority to John Mackey? Mr. Mackey may be an individual who is incompetent or incapable of serving as a designee. Nor is there any way to determine if Carol T. Crawford is Mr. Thornburghs designee. Unfortunately, the case law under 6005(b)(3) does not resolve the problem. The statute is silent as to whom a designee of the Attorney General must be.

The wiretap case of United States v. Giordono, 416 U.S. 505 (1974), is similar to this case and is instructive. In Giordano, the Supreme Court of the United States strictly contrued 18 U.S.C. 2516(1) (Title III of the Omnibus Crime Control and Safe Streets Act ~~of~~ 1968). Section 2516 States, inter alia;

> the Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal Judge . . . for . . . an order authorizing or approving the interception of wire or oral communications.

The Defendant Giordano, a narcotics dealer, challenged evidence derived from a wiretap by the FBI on his telephone during the suppression hearings, it developed that the initial wiretap had been authorized by the Attorney General's Executive Assistant, not the Attorney

General or his special designated Assistant Attorney General. U.S. v.Giordano, 416 at 510. After a careful review of the statute's legislative history and a thorough analysis of 2516(1), the Supreme Court held that Congress did not intend the power to authorize wiretap applications to be exercised by any individuals other than the Attorney General or an Assistant Attorney General specially designated by him. Id. at 512-523. Section 2516(1) was intended to limit the power to authorize wiretap applications to the Attorney General and to any Assistant Attorney General he might designate. Id. at 512-514. The purpose of restricting approval of wiretap applications to the Attorney General or his specially designated Assistant Attorney General was to make sure that this critical act of judgment, affecting individual civil rights, was the exercise of mature judgment by a responsible official in the Department of Justice. Id. at 516, 517-518.

Accordingly, the authorization or approval of the wiretap application by the Attorney General's Executive Assistant contravened 18 U.S.C. 2516(1). All evidence derived as a result of such approvals was suppressed.

By analogy, if a designee under 6005(b)(3) waives the 10-day notice rule, the identity of the designee must be clear and ascertainable. The rationale of Giordano is applicable here. The individual waiving the 10-day notice period should be a mature, responsible official capable of properly exercising critical judgment as to whether the provision should be waived. The legislative purpose of 6005(b)(3) indicates that this is an important provision. It provides the Department of Justice time to lobby for a change of minds on the part of the Congressional Committee, should the Attorney General object to the grant of immunity. It also gives the Attorney General an opportunity to insulate from a grant of immunity any incriminating data already in his files prior to the witness' testimony. Cammisano, 665 F.2d at 1236.

We submit that the letter of June 9, 1989, sorely fails to reveal who authorized the waiver of the 10-day notice provision. The letter is confusing and ambigious. The signature on the document is that of an individual who attempts to exercise a power delegated to the assumed designee of the Attorney General. Is the designee John Mackey or Carol T. Crawford? It is impossible to make the determination. Consequently, the 10-day notice procedural requirement of 6005(b)(3) has not been met. The letter of June 9, 1989 is inadequate to waive the provision. The application for an order granting use immunity to Mr. Borders was filed on June 14, 1989. Notice of intent to request the order was given to the Attorney General on June 8, 1989. The application should have been filed on June 18, 1989, 10-days after notice was given to the Attorney General. Furthermore, the letter did not effectively waive 6005(c) which allows the Attorney General to request that the district court defer subsection (a) for a period, not longer than 20-days from the date of the request for such order. However, 6005(c) unlike 6005(b)(3) is not a condition precedent for filing the request for a use immunity order with the District Court.

III. CONCLUSION

Accordingly, for the reasons set forth above, William A. Borders requests that the application of the Trial Committee be denied.

Respectfully submitted,

Michael Rozier
1411 K Street, N.W.
Suite 711
Washington, D.C. 20005
(202) 638-7100

Marvin Arrington
First Atlanta Tower
22nd Floor
Two Peachtree Street, N.E.
Atlanta, Georgia 33083

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

. . . .

IMPEACHMENT TRIAL COMMITTEE ON ARTICLES AGAINST JUDGE ALCEE HASTINGS
. .

MISCELLANEOUS NO. 89-129

WASHINGTON, D. C.
JUNE 29, 1989
1:45 P. M.

. . . .

TRANSCRIPT OF HEARING BEFORE THE
HONORABLE LOUIS F. OBERDORFER,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

MICHAEL DAVIDSON, ESQ., SENATE LEGAL COUNSEL
MORGAN FRANKEL, ESQ., ASSISTANT COUNSEL
MARK KLUGHERT, ESQ., COUNSEL, IMPEACHMENT TRIAL COMMITTEE

ALAN I. BARON, ESQ., SPECIAL COUNSEL TO HOUSE OF REPRESENTATIVES

MICHAEL S. ROSIER, ESQ., COUNSEL FOR WILLIAM BORDERS

- - - - -

(PROCEEDINGS REPORTED BY MACHINE SHORTHAND; TRANSCRIPT PREPARED BY NOTEREADING.)

PROCEEDINGS

THE DEPUTY CLERK: MISCELLANEOUS NO. 89-129, IMPEACHMENT TRIAL COMMITTEE ON ARTICLES AGAINST JUDGE ALCEE HASTINGS.

THE COURT: MR. DAVIDSON, BEFORE YOU BEGIN, I WANT TO PUT ON THE RECORD THAT MY OFFICE HAD A CALL FROM COUNSEL FOR JUDGE HASTINGS, TERRY ANDERSON, SAYING THAT HE DID NOT PLAN TO APPEAR AND TOOK NO POSITION ON YOUR MOTION.

MR. DAVIDSON: YES, YOUR HONOR.

THE COURT: IS THERE ANYTHING YOU WANT TO TELL ME ABOUT IT?

MR. DAVIDSON: ABOUT --

THE COURT: ABOUT THE MOTION?

MR. DAVIDSON: ABOUT THE MOTION, YES.

THE COURT: ALL RIGHT.

MR. DAVIDSON: MR. ANDERSON HAD CALLED AND HAD ADVISED ME ABOUT THAT FACT, AS WELL.

THE COURT: VERY WELL.

MR. DAVIDSON: YOUR HONOR, I HAVE HAD SOME LARYNGITIS OVER THE PAST WEEK, AND I HOPE I CAN BE UNDERSTOOD.

THE COURT: WELL, I HAVE HAD A COUGH, TOO. WE CAN HAVE A CHORUS.

MR. DAVIDSON: THIS IS AN APPLICATION BY THE COMMITTEE THAT HAS BEEN APPOINTED BY THE SENATE TO RECEIVE EVIDENCE ON THE ARTICLES OF IMPEACHMENT AGAINST JUDGE HASTINGS. UNDER

THE IMMUNITY STATUTE, THERE ARE TWO PRINCIPAL PREREQUISITES FOR AN IMMUNITY APPLICATION.

ONE IS THAT THE COMMITTEE VOTE BY TWO-THIRDS OF ITS MEMBERSHIP, AND THERE IS ATTACHED TO THE APPLICATION THE RESOLUTION THAT WAS AGREED TO BY NINE OUT OF THE 12 MEMBERS. THEY WERE THE NINE MEMBERS PRESENT AT THE TIME.

THE SECOND PREREQUISITE IS THAT TEN DAYS OR MORE PRIOR TO THE DAY ON WHICH THE REQUEST FOR AN ORDER IS MADE, THE ATTORNEY GENERAL HAS TO HAVE BEEN SERVED BY THE NOTICE. THAT IS TO GIVE THE ATTORNEY GENERAL AN OPPORTUNITY TO DO SEVERAL THINGS, ONE OF WHICH IS TO SEEK TO PERSUADE THE COMMITTEE NOT TO APPLY FOR AN IMMUNITY ORDER.

THE SECOND WOULD BE: IF THE ATTORNEY GENERAL ANTICIPATED ANY PROSECUTION, TO BEGIN THE PROCESS OF SEALING HIS OWN EVIDENCE.

AT THE TIME THAT WE FILED THE APPLICATION, IT WAS LESS THAN TEN DAYS AFTER THE ATTORNEY GENERAL HAD BEEN SERVED. WE ATTACHED TO THE APPLICATION A LETTER FROM THE DEPARTMENT OF JUSTICE, WAIVING THE TEN-DAY PERIOD AND THE FURTHER PERIOD THAT THE ATTORNEY GENERAL MIGHT HAVE ASKED FOR A DELAY IN THE IMMUNITY ORDER.

THAT LETTER IS EXHIBIT F TO THE APPLICATION.

A NUMBER OF YEARS AGO THIS COURT AND THEN THE D.C. CIRCUIT, ON APPEAL, HAD OCCASION TO CONSIDER WHETHER THE TEN-DAY PROVISION WAS WAIVERABLE, AND THE ANSWER IN THE

OPINION WRITTEN BY JUDGE WRIGHT WAS CLEARLY THAT IT IS. IT IS A PERIOD THAT IS FOR THE BENEFIT OF THE DEPARTMENT OF JUSTICE, AND, THEREFORE, WAIVERABLE BY IT.

WE HAVE JUST BEEN PRESENTED WITH AN OPPOSITION FILED BY MR. BORDERS WHICH ASSERTS THAT THE WAIVER WAS INEFFECTIVE BECAUSE IT WAS NOT SIGNED PERSONALLY BY THE ATTORNEY GENERAL, BUT BY A DESIGNEE OF THE ATTORNEY GENERAL.

I SHOULD SAY TWO THINGS ABOUT THAT. ONE, IN THE CAMMISANO CASE, THAT WAIVER WAS SIGNED BY AN ASSISTANT ATTORNEY GENERAL AND NOT BY THE ATTORNEY GENERAL. THERE IS NO DOUBT THAT IT IS THE WAIVER OF THE DEPARTMENT OF JUSTICE.

SECONDLY, AND PERHAPS MORE IMPORTANTLY AND DISPOSITIVELY, THIS WAIVER IS DATED JUNE 9TH, AND NOTICE HAD BEEN RECEIVED BY THE ATTORNEY GENERAL ON JUNE 8TH. THE TEN-DAY PERIOD WOULD HAVE TAKEN US, LET'S SAY, TO JUNE 18TH, AND THIS IS NOW JUNE 26TH.

SO THAT, ALTHOUGH WE HAD OBTAINED THE WAIVER, ANTICIPATING AN EARLIER SUBMISSION TO THE COURT, IT IS NOW CLEARLY BEYOND THE TEN-DAY PERIOD, AND THERE WOULD BE NO WAIVER REQUIRED AT ALL.

THE COURT: DO YOU HAVE ANY INFORMATION AS TO WHETHER THE MATTER WAS BROUGHT TO THE PERSONAL ATTENTION OF THE ATTORNEY GENERAL?

MR. DAVIDSON: I DO NOT KNOW. WE HAVE FOLLOWED THE CUSTOMARY COURSE OF ACTION IN THESE MATTERS. WE ADDRESSED

THE NOTICE TO THE ATTORNEY GENERAL, AND THE NOTICE IS EXHIBIT D TO THE APPLICATION.

BY ARRANGEMENT WITH THE DEPARTMENT OF JUSTICE IN THIS AND MANY OTHER MATTERS, WE DELIVERED IT TO THE OFFICE OF LEGISLATIVE AFFAIRS AND HAVE ALWAYS LEFT IT TO THE DEPARTMENT TO DETERMINE HOW TO HANDLE IT WITHIN THE DEPARTMENT.

THE COURT: ALL RIGHT. THANK YOU.

MR. DAVIDSON: I WOULD JUST LIKE TO ADVISE THE COURT OF ONE THING. AS THE CASES INDICATE, THE COURT'S FUNCTION, OF COURSE, IS A LIMITED FUNCTION: TO DETERMINE WHETHER THESE PREREQUISITES HAVE BEEN FOLLOWED.

THE COMMITTEE HAS FILED THIS APPLICATION -- AND I DO THIS FOR THE INFORMATION OF THE COURT AND FOR MR. BORDERS -- WITHOUT HAVING MADE A FINAL DETERMINATION WHETHER MR. BORDERS WOULD BE CALLED AT THE HEARINGS, WHICH WILL START ON JULY 10TH.

HE IS OBVIOUSLY A PIVOTAL PERSON TO THIS ENTIRE STORY. THERE MAY BE TWO PEOPLE IN THE WORLD WHO KNOW FINALLY THE TRUTH OF WHAT HAPPENED, JUDGE HASTINGS AND MR. BORDERS.

THE HOUSE HAS NOT PLACED MR. BORDERS ON THE WITNESS LIST, AND MR. ANDERSON, WHO REPRESENTS JUDGE HASTINGS, HAS NOT PLACED HIM ON ANY WITNESS LIST TO DATE, BUT HAS RESERVED THE RIGHT TO CALL HIM.

THE COMMITTEE MIGHT DETERMINE ON ITS OWN TO CALL MR. BORDERS. IT HAS DECIDED THAT IT IS VERY IMPORTANT TO

ARRANGE FOR HIS TESTIMONY IN ADVANCE OF A FINAL DECISION, TO THE EXTENT THAT AN IMMUNITY ORDER WOULD CLEAR THE WAY TO RECEIVE HIS TESTIMONY, ONCE THE HEARINGS START IN JULY.

THANK YOU.

THE COURT: THANK YOU. IS THE UNITED STATES REPRESENTED?

MR. DAVIDSON: I UNDERSTAND THAT YOUR CHAMBERS DID NOTIFY THE DEPARTMENT OF JUSTICE.

THE COURT: WE DID. THEY ARE NOT PRESENT. VERY WELL.

MR. ROSIER.

MR. ROSIER: GOOD AFTERNOON, YOUR HONOR.

THE COURT: GOOD AFTERNOON, SIR.

MR. ROSIER: FOR THE RECORD, I AM MICHAEL ROSIER ON BEHALF OF WILLIAM BORDERS.

I HAVE FILED AN OPPOSITION TO THIS APPLICATION.

THE COURT: I HAVE NOT RECEIVED IT. COULD YOU HAND IT UP?

MR. ROSIER: I HAVE A COPY HERE. THE ORIGINAL HAS NOT BEEN FILED WITH THE CLERK. I JUST BROUGHT IT OVER AS I CAME TODAY.

THE COURT: ALL RIGHT.

MR. ROSIER: BUT, BASICALLY, AS MR. DAVIDSON CORRECTLY STATED, THE ROLE OF THE COURT AT THIS JUNCTURE IS SIMPLY TO DETERMINE THE PROPRIETY OF THIS APPLICATION, AND THERE ARE CASES THAT HOLD THAT THE COURT IS ESSENTIALLY A CHECK

POINT TO SCRUTINIZE AT THIS POINT IN TIME THE EVIDENCE THAT IS OF RECORD AND TO DETERMINE THE PROCEDURAL PROPRIETY AND THE JURISDICTIONAL PROPRIETY OF ALLOWING THIS IMMUNIZATION TO TAKE PLACE.

PROCEDURALLY, AS MR. DAVIDSON POINTED OUT, THERE ARE TWO THINGS THAT MUST BE COMPLIED WITH, THE FIRST OF WHICH WE HAVE NO PROBLEM WITH, THAT BEING THE TWO-THIRDS OF THE COMMITTEE, WHICH IS FOUND UNDER 28 U.S.C. 6005, SUBSECTION (2).

SUBSECTION (3), WHICH IS THE TEN-DAY NOTICE, IS THE PROCEDURAL IMPEDIMENT THAT WE SEE AT THIS POINT IN TIME, YOUR HONOR.

MR. DAVIDSON POINTED OUT, AND AS HE INDICATED IN HIS MEMORANDUM, THAT THE ATTORNEY GENERAL MAY WAIVE THIS TEN-DAY REQUIREMENT. HOWEVER, THE EXHIBIT F, WHICH WAS REFERRED TO BY MR. DAVIDSON AND WHICH IS OUR EXHIBIT C, WAS SIGNED, BUT NOT BY THE ATTORNEY GENERAL, AND NOT BY AN ASSISTANT ATTORNEY GENERAL, BUT BY A PERSON BY THE NAME OF JOHN MACKEY FOR CAROL T. CRAWFORD, ASSISTANT ATTORNEY GENERAL.

AT THIS POINT IN TIME, WITH THE RECORD THAT IS BEFORE THE COURT, I AM NOT ABLE TO ASCERTAIN AS TO WHETHER THIS MR. MACKEY IS AN ASSISTANT ATTORNEY GENERAL OR WHETHER HE IS AN ATTORNEY, WHETHER HE IS A DESIGNEE, AS ALLEGED IN THIS APPLICATION. NONE OF THESE MATTERS ARE CLEAR, AND

I THINK THIS IS A PROCEDURAL HURDLE, WHICH IS OF A NATURE THAT THE COURT HAS TO ADDRESS TODAY.

IT IS OUR POSITION THAT, IN THE ABSENCE OF AN AFFIRMATIVE SHOWING THAT THIS IS AN APPROPRIATE DESIGNEE, THAT THIS APPLICATION IS NOT WELL FOUNDED AND SHOULD BE DISMISSED.

THE CASE, WHICH IS CITED AND WHICH WE CITE IN SUPPORT OF OUR CONTENTIONS, IS FOUND ON PAGE 6. IT IS THE CASE OF THE UNITED STATES V. GIORDANO.

THIS ARISES OUT OF AN ANALOGOUS SITUATION UNDER TITLE III, WHICH INVOLVED A WIRETAP CASE WHEREIN THE DESIGNEE, IF THE COURT IS FAMILIAR WITH THE CASE, WAS ALLOWED TO AUTHORIZE A WIRETAP, WHICH WE BELIEVE TO BE ANALOGOUS TO THAT CASE.

THE EVIDENCE WHICH WAS RECEIVED AS A RESULT OF THAT WIRETAP, WHICH WAS NOT AUTHORIZED BY AN APPROPRIATE DESIGNEE, WAS SUPPRESSED. I FEEL THAT IS AN APPROPRIATE CASE. I THINK IT IS ON POINT WITH THE ISSUES THAT ARE BEFORE THE COURT, AND WE WOULD ASK THE COURT TO DISMISS THIS APPLICATION FOR IMMUNIZING WILLIAM BORDERS.

THE COURT: MR. DAVIDSON, I DID REMEMBER THE GIORDANO CASE, AND I HAD NOT FOCUSED ON THE FACT THAT MR. MACKIE IS THE SIGNER, AND I DON'T KNOW WHO HE IS.

WOULD IT NOT BE PRUDENT TO HAVE THEM PULL UP THEIR SOCKS AND FILE A CORRECT WAIVER?

MR. DAVIDSON: BUT NO WAIVER IS REQUIRED, YOUR HONOR, BECAUSE WE ARE WELL PAST THE TEN-DAY PERIOD.

THE COURT: THAT IS NOT WHAT THE STATUTE SAYS. IT SAYS WITHIN TEN DAYS --

MR. DAVIDSON: PRIOR TO THE REQUEST FOR THE APPLICATION.

THE COURT: -- PRIOR TO THE REQUEST. I AM NOT A TECHNICAL PERSON, AND I DON'T LIKE TO LET FORM DOMINATE SUBSTANCE, BUT SOMETIMES IT IS WORTH AN OUNCE OF PREVENTION HERE TO KEEP FROM HAVING A SUPREME COURT CASE GROW OUT OF THIS.

MR. DAVIDSON: YOUR HONOR, I DO BELIEVE THAT NO SUPREME COURT CASE WOULD ARISE OUT OF THIS. IT IS TEN DAYS OR MORE PRIOR TO THE DAY ON WHICH THE REQUEST FOR THE ORDER WAS MADE.

THE COURT: YES.

MR. DAVIDSON: AND WE HAD FILED IT EARLIER, BUT WE ARE REQUESTING IT TODAY. I CAUSED THE SERVICE ON THE OFFICE OF LEGISLATIVE AFFAIRS, WHICH IS OUR METHOD, ASKED FOR BY THE DEPARTMENT OF JUSTICE, FOR SERVING THE ATTORNEY GENERAL.

I HAVE MY NOTICE AND MY CERTIFICATE OF THAT NOTICE. THE WAIVER IS A TOTALLY MOOT POINT AT THIS TIME, BECAUSE THAT SERVICE OCCURRED ON JUNE 8TH. IT IS CLEAR THAT IT WAS RECEIVED. YOUR OFFICE HAS ALSO NOTIFIED THE DEPARTMENT OF JUSTICE.

THE COURT: WELL, THAT WAS BY TELEPHONE. OUR ORDER WAS SENT OUT ON THE 20TH. WE FILED THE ORDER THAT CALLED

FOR THIS HEARING ON THE 20TH. I JUST DO NOT THINK IT IS WORTH IT TO GIVE SOMEBODY AN ISSUE ON APPEAL.

MR. DAVIDSON: WHAT WOULD THE COURT SUGGEST?

THE COURT: I SUGGEST THAT I HOLD THIS MATTER UNDER ADVISEMENT, TO GIVE YOU AN OPPORTUNITY TO PERFECT THE WAIVER SOUGHT FROM THE ATTORNEY GENERAL. I DON'T KNOW BY WHAT METHOD, BUT AT LEAST THE SIGNATURE OF A PRESIDENTIAL APPOINTEE.

MR. DAVIDSON: WE NO LONGER SEEK A WAIVER. WE NO LONGER REQUIRE A WAIVER.

THE COURT: WELL, THAT IS WHAT YOU SAY, BUT I AM JUST TELLING YOU THAT THE STATUTE, AT LEAST ON ITS FACE, SUGGESTS THAT THERE IS A TEN-DAY PERIOD HERE. I KNOW IT IS ALL FOR THE BENEFIT OF THE ATTORNEY GENERAL, BUT THESE ARE THE KINDS OF FLYSPECKS THAT DERAIL WELL-INTENTIONED LEGAL SOLUTIONS.

MR. DAVIDSON: AS YOUR HONOR KNOWS FROM OTHER CASES, WE HAVE -- AND, CERTAINLY, IF IT IS YOUR WISH, WE WILL DO THIS, BUT THIS WAIVER WAS ONLY FOR THE LIMITED PURPOSE OF ALLOWING THE APPLICATION TO BE BROUGHT ON BEFORE YOU OR ANY OTHER JUDGE OF THE COURT WITHIN THE TEN-DAY PERIOD FROM JUNE 8TH.

THE COURT: AND YOU DID THAT, AND THAT IS WITHOUT THE WAIVER.

NOW, I UNDERSTAND ALL OF THE ARGUMENTS ON THE MERITS WHY THIS IS POSSIBLY AN UNNECESSARY PRECAUTION, BUT I WOULD

FEEL MORE COMFORTABLE IF YOU OBTAIN FROM THE UNITED STATES A WAIVER SIGNED, IF NOT BY THE ATTORNEY GENERAL PERSONALLY, AT LEAST BY A PRESIDENTIAL APPOINTEE OR AT LEAST BY SOMEONE WHO CAN BE IDENTIFIED. I DON'T KNOW WHO THIS IS.

MR. DAVIDSON: IF WE ARE NO LONGER SEEKING A WAIVER BECAUSE THE TEN-DAY PERIOD HAS ELAPSED, AND THE SECOND PART OF THAT LETTER WAS SIMPLY TO ADVISE THE COURT THAT AT THE TIME OF THIS APPLICATION, TODAY, NO ONE FROM THE DEPARTMENT OF JUSTICE WOULD APPEAR AND ASK FOR A 20-DAY PERIOD, IT IS NOT A LIMITATION ON US, BUT IT IS SIMPLY A WAY OF ESTABLISHING THE RECORD, WHICH IS ALSO ESTABLISHED BY THE ABSENCE OF ANYONE FROM THE DEPARTMENT --

THE COURT: YOU GET SOMEBODY TO RATIFY OR AT LEAST VERIFY TO ME WHO MR. MACKEY IS.

MR. DAVIDSON: AND IS IT SIMPLY THAT THEY, IN FACT --

THE COURT: I AM JUST LOOKING AT THE GIORDANO CASE.

MR. DAVIDSON: WELL, THE GIORDANO CASE --

THE COURT: I CAN DISTINGUISH IT, BUT NOBODY ANTICIPATED IT, EITHER.

MR. DAVIDSON: (CONTINUING) -- WAS: WHO HAD AUTHORITY TO ASK FOR THE APPLICATION.

THE COURT: YES.

MR. DAVIDSON: AND THAT IS RESOLVED BY THE APPLICATION OF THE COMMITTEE.

I MEAN WE CAN OBTAIN FROM THE DEPARTMENT OF JUSTICE, IF IT WOULD RESOLVE THE COURT'S PROBLEM, SOME OTHER LETTER THAT, IN FACT, THIS APPLICATION, THIS NOTICE, THE JUNE 8TH NOTICE, WAS RECEIVED BY AN ASSISTANT ATTORNEY GENERAL.

I AM ONLY RELUCTANT TO ASK THEM FOR A WAIVER, SINCE WE NO LONGER ARE ASKING THEM FOR A WAIVER.

THE COURT: WELL, WHY DON'T YOU LET THEM TELL ME ON THE RECORD, IN ADDITION, THAT THEY HAVE NO OPPOSITION TO THE IMMUNITY.

MR. DAVIDSON: WELL, THEY HAVE NEVER TAKEN THE POSITION THAT THEY HAVE ANY STANDING TO OBJECT TO THE IMMUNITY. I DON'T KNOW WHETHER THEY WOULD BECAUSE THEY DON'T --

THE COURT: IF THEY SAY THAT, THAT WOULD BE FINE, TOO; JUST SO THEY ARE ESTOPPED.

MR. DAVIDSON: IF THE ASSISTANT IS NOT AVAILABLE, WOULD SOME CLARIFICATION AS TO WHO THE SIGNER OF THE LETTER IS BE SUFFICIENT?

THE COURT: WELL, THERE MUST BE SOMEBODY THERE WHO IS A PRESIDENTIAL APPOINTEE WHO CAN SIGN A LETTER IN A MATTER OF THIS SIGNIFICANCE.

MR. DAVIDSON: WE WILL ARRANGE TO HAVE --

THE COURT: WHY DON'T YOU FILE THAT.

MR. DAVIDSON: (CONTINUING) -- THAT FILED. THEN WE WOULD ASK THE COURT FOR THE EARLIEST POSSIBLE DISPOSITION.

THE COURT: I WILL ACT ON IT VERY PROMPTLY. IF YOU GET THAT BACK TODAY, IT WILL BE DEALT WITH TODAY.

MR. DAVIDSON: THANK YOU.

THE COURT: IS THERE ANYTHING FURTHER, MR. ROSIER?

MR. ROSIER: NOTHING FURTHER, JUDGE.

THE COURT: THANK YOU VERY MUCH.

MR. ROSIER: THANK YOU.

MR. DAVIDSON: THANK YOU, SIR.

THE COURT: NICE TO SEE YOU ALL.

(WHEREUPON, THE COURT CONCLUDED THE HEARING.)

- - - - -

REPORTER'S CERTIFICATE

I, THOMAS DOURIAN, CERTIFY THAT THE FOREGOING IS THE OFFICIAL TRANSCRIPT OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER; AND THAT IT IS COMPLETE AND ACCURATE, TO THE BEST OF MY KNOWLEDGE AND ABILITY.

OFFICIAL REPORTER

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE
ON THE ARTICLES AGAINST
JUDGE ALCEE L. HASTINGS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 89-129 (LFO)

RECEIVED
JUN 27 10 49 AM '89
JAMES [illegible] CLERK
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

NOTICE OF FILING

Pursuant to the Court's request at the hearing on June 26, 1989, applicant submits for filing a copy of the June 26, 1989 letter from Carol T. Crawford, Assistant Attorney General for the Office of Legislative Affairs, to Michael Davidson, Senate Legal Counsel, confirming that "[t]he Department of Justice has no objection to the proposed order to compel the testimony of William A. Borders, Jr., and hereby waives the provisions of 18 U.S.C. Section 6005(b)(3) and (c)." Ms. Crawford is a presidential appointee. See 135 Cong. Rec. S5753, 5755 (daily ed. May 18, 1989)(record of Senate confirmation). Attached to Ms. Crawford's June 26, 1989 letter are two letters which she attached to that letter, namely, a letter to Ms. Crawford, dated June 8, 1989, from Elaine W. Stone, counsel to the Impeachment Trial Committee, and the formal notification to the Attorney General, which was also dated and delivered on June 8, 1989.

Respectfully submitted,

Michael Davidson
Senate Legal Counsel

Ken U. Benjamin, Jr.
Deputy Senate Legal Counsel

Morgan J. Frankel
Assistant Senate Legal Counsel

642 Hart Senate Office Building
Washington, D.C. 20510-7250
(202) 224-4435

Counsel for Applicant

Dated: June 27, 1989

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 26, 1989

Michael Davidson, Esquire
Senate Legal Counsel
Room 642
Senate Hart Office Building
Washington, D.C. 20510-7250

RECEIVED JUN 26 1989

Dear Mr. Davidson:

This is in response to your notice dated June 8, 1989, to Attorney General Thornburgh of the intention of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings to apply for an immunity order for William A. Borders, Jr.

The Department of Justice has no objection to the proposed order to compel the testimony of William A. Borders, Jr. and hereby waives the provisions of 18 U.S.C. Section 6005(b)(3) and (c).

By letter of June 9, 1989, the Department of Justice previously responded to your inquiry under the signature of John P. Mackey, Deputy Assistant Attorney General in this office, who was authorized to sign in my absence.

However, to alleviate any concerns the court might have on the Department's views as expressed in the June 9th letter, I again state those views herein.

Sincerely,

Carol T. Crawford

Carol T. Crawford
Assistant Attorney General

cc: Elaine W. Stone
Impeachment Trial Committee
(On the Articles Against
Judge Alcee L. Hastings)
Room 902D, Hart Senate Office Bldg.
Washington, D.C. 20510

JEFF BINGAMAN, NEW MEXICO, CHAIRMAN
ARLEN SPECTER, PENNSYLVANIA, VICE CHAIRMAN
PATRICK J. LEAHY, VERMONT
DAVID PRYOR, ARKANSAS
RICHARD H. BRYAN, NEVADA
J. ROBERT KERREY, NEBRASKA
JOSEPH I. LIEBERMAN, CONNECTICUT
DAVE DURENBERGER, [illegible]NESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
CHRISTOPHER S. BOND, MISSOURI
SLADE GORTON, WASHINGTON
CONRAD BURNS, MONTANA
ANTHONY L. HARVEY, ADMINISTRATOR
ELAINE W. STONE, COUNSEL
MARK A. ELUCHEIT, COUNSEL
P. CASEY McGANNON, STAFF ASSISTANT

PHONE: (202) 224-8471
TELECOPIER: (202) 224-8577

United States Senate
IMPEACHMENT TRIAL COMMITTEE
(ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS)
HART SENATE OFFICE BUILDING, ROOM SH-902D
WASHINGTON, DC 20510

June 8, 1989

Carol Crawford, Esq.
Assistant Attorney General
Office of Legislative Affairs
Room 1603
United States Department of Justice
Washington, D.C. 20530

Dear Ms. Crawford:

Enclosed is a notice of the intention of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings to apply for an immunity order for William A. Borders, Jr.

The committee has been in touch with Edgar Brown in the Witness Immunity Unit concerning this witness. The committee would like to be able to present its immunity application to the district court as soon as possible. We would therefore appreciate your early advice whether the Attorney General would be willing to waive his statutory right to a ten-day waiting period between this notification and the filing of the committee's application and his right to seek a twenty-day deferral of the issuance of an order.

Thank you for your assistance. Please let me know if there is anything that I can do in this matter.

Sincerely,

Elaine W. Stone

Elaine W. Stone

Enclosure

cc: Mr. Edgar Brown

MICHAEL DAVIDSON
COUNSEL
KEN U. BENJAMIN, JR.
MORGAN J. FRANKEL
ASSISTANT COUNSEL

PHONE: (202) 224-4435
TELECOPIER: (202) 224-3391

United States Senate
OFFICE OF SENATE LEGAL COUNSEL
WASHINGTON, DC 20510-7250

NOTICE OF INTENTION TO REQUEST ORDER CONFERRING IMMUNITY

TO: The Honorable Dick Thornburgh
The Attorney General of the United States
Washington, D.C. 20530

Please take notice that the undersigned, as representative of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, will request the United States District Court for the District of Columbia, pursuant to 18 U.S.C. § 6005 and 2 U.S.C. §§ 288b(d) and 288f, to issue an order immunizing from use in prosecutions the testimony of, and other information provided by, William A. Borders, Jr., at proceedings of the committee.

Michael Davidson
Michael Davidson
Senate Legal Counsel
642 Senate Hart Office Building
Washington, D.C. 20510
(202) 224-4435

Dated: June 8, 1989

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
JUN 27 1989
CLERK, U.S. DISTRICT COURT,
DISTRICT OF COLUMBIA

IMPEACHMENT TRIAL COMMITTEE
ON THE ARTICLES AGAINST
JUDGE ALCEE L. HASTINGS

The United States Senate
Washington, D.C. 20510,

Applicant.

Misc. No. 89-129

ORDER

Upon consideration of the application by the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, and upon determining that the procedural requirements set forth in 18 U.S.C. § 6005 have been satisfied, it is, this 27th day of June, 1989,

ORDERED That William A. Borders, Jr., may not refuse to testify, and provide other information, at proceedings of the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings, on the basis of his privilege against self-incrimination, and it is

FURTHER ORDERED That no testimony or other information compelled under this Order (or any information directly or indirectly derived from such testimony or other information) may be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

Louis F. Oberdorfer
United States District Judge

United States District Court
for the District of Columbia
A TRUE COPY
JAMES F. DAVEY, CLERK,
By M. Keller
Deputy Clerk

RECEIVED JUL 1 0 1989

United States District Court for the District of Columbia

FILED JUL - 6 1989

JAMES F. DAVEY
CLERK

Impeachment Trial Committee
on The Articles Against
Judge Alcee L. Hastings

~~Plaintiff.~~

vs.

United States Senate
Washington, D.C. 20510

~~Defendant.~~

Misc. ~~Civil No.~~ No. 89-129

NOTICE OF APPEAL

Notice is hereby given this day of , 19 , that

WILLIAM A. BORDERS, JR.

hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 27 day of June , 1989 in favor of the United States Senate against said William A. Borders, Jr.

Michael S. Rosier, Attorney
1420 K Street, N.W.
Suite 711
Washington, D.C. 20005

Attorney for

William A. Borders, Jr.

RECEIVED
6 3 22 PM '89
JAMES
U.S. DIST
DISTRICT

CLERK: Please mail copies of the above Notice of Appeal to the following at the addresses indicated: